United States Court of Appeals
for the Second Circuit

APPENDIX

NO. 77-4200

United States Court of Appeals

FOR THE SECOND CIRCUIT

B

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

DESCO VITRO-GLAZE OF SCHENECTADY, INC.,
AND LOCALS 6 AND 16, BRICKLAYERS, MASONS,
PLASTERERS, MARBLE, TILE, AND TERRAZZO WORKERS,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FILED
FEB 16 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

INDEX

Chronological List of Relevant Docket Entries.......................... III

Excerpts from the Transcript of Testimony of June 2, August 3, 4, 5, 1976 with Administrative Law Judge Michael O. Miller..1

Excerpts from the Transcript of Testimony of June 11, 12, 1975 with Administrative Law Judge James V. Constantine..323a

Administrative Law Judge's Supplemental Decision of Michael O. Miller, Dated December 22, 1976..........................405

Board's Decision and Order, Dated June 23, 1977..424

Administrative Law Judge's Decision of James V. Constantine, Dated September 8, 1975...................433

General Counsel's Exceptions to Administrative Law Judge's Decision, Dated September 26, 1975................................453

Board's Order, Dated March 1, 1976 (GC#1u)............................470

Motion for Reconsideration of Board Order, Dated March 1, 1976 Directing a Hearing de novo......................473

Board's Order Denying Motions, Dated May 10, 1976..477

Exceptions of Respondent to Decision of Administrative Law Judge, Dated January 28, 1977..................................479

General Counsel Exhibit# 2..483

" " " 4..484

" " " 5..485

" " " 6..486

" " " 7..487

INDEX

General Counsel Exhibit# 13.............................. 488

Working Agreement between Capital District Tile, Marble, Terrazzo and Slate Contractors Assoc., and Local 59... 489

General Counsel Exhibit# 13 (Exhibit D)..................499

" " " 14 500

" " " 16 501

" " " 17..............................502

Affidavit of Constantine Psarras 503

Employers Exhibit#1.....................................509

Employers Exhibit#2.....................................514

III

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Desco Vitro-Glaze of Schenectady,
Inc., et al.

Board Case Nos.; 3-CA-5993, 3-CB-2498-1&-2

3. 4.75	Charge filed in 3-CA-5993
3. 4.75	Charge filed in 3-CB-2489-1
3. 4.75	Charge filed in 3-CB-2498-2
4.14.75	Amended Charge filed in 3-CA-5993
4.14.75	Amended Charge filed in 3-CB-2498-1
4.14.75	Amended Charge filed in 3-CB-2498-2
4.18.75	Regional Director's Order consolidating Cases, Complaint and Notice of Hearing, dated
4.25.75	Respondent's Answer, dated
4.28.77	Respondent's Answer, dated
5.27.75	Amendment to Order Consolidating Cases, Complaint and Notice of Hearing, dated
6. 2.75	Second Amendment to Order Consolidating Cases Complaint and Notice of Hearing, dated
3. 1.76	Board's Order, dated
3.16.76	Notice of Hearing, dated
3.19.76	Respondent's Motion for Reconsideration of Board Order dated March 1, 1976 Directing a Hearing de novo, dated
5.10.76	Board's Order Denying Motions, dated
6. 2.76	Hearing Opened
8. 5.76	Hearing Closed

IV

9. 8.76	General Counsel's motion to correct transcript, dated
12.22.76,	Administrative Law Judge's Supplemental Decision issued
1.31.77	Exceptions of Respondent to Decision of Administrative Law Judge, received
1.31.77	Exceptions of Local 6 and 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL-CIO, to Decision of Administrative Law Judge, received
2. 2.77	General Counsel's Cross-Exceptions to Administrative Law Judge's Decision, received
6.23.77	Decision and Order of the National Labor Relations Board, dated

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:

DESCO VITRO-GLAZE OF SCHENECTADY, INC.
-and-
LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO,

Case No.
3-CA-5993

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE & TERRAZZO WORKERS INTERNAT'L UNION, AFL-CIO,
-and-
LOCAL 59, INTERNAT'L ASSOC. OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO,

Case No.
3-CB-2498-1

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS, MARBLE & TILE & TERRAZZO WORKERS INTERNAT'L UNION, AFL-CIO,
-and-
LOCAL 59, INTERNAT'L ASSOC. OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO,

Case No.
3-CB-2498-2

Court Room No. 2, 7th Floor
Justice Building
Empire State Plaza
State Street
Albany, New York

Wednesday, June 2, 1976

The above-entitled matter came on for hearing pursuant to Notice at 10:00 o'clock a.m.

BEFORE:

HONORABLE MICHAEL O. MILLER, Administrative Law Judge

APPEARANCES:

PAUL V. MULKERN, JR., ESQ.	National Labor Relations Board, Leo W. O'Brien Federal Bldg., Cor. of Clinton Ave. & N. Pearl, Albany, N.Y. 12207 appearing as Counsel for the General Counsel.
DANIEL J. SMITAS, ESQ.	56 Fuller Road Albany, New York 12203 appearing on behalf of the the Employer.
DOMINICK TOCCI, ESQ.	112 State Street Albany, New York 12208 appearing on behalf of the Respondent Unions.
DAVID LAVENBERG	Business Agent 11 Crestwood Court Albany, New York 12208 appearing on behalf of the Charging Party.
GERALD BOMBASSARO	International Rep. 1210 Oakmont Street Pittsburgh, Penn. 15205 appearing on behalf of the Charging Party.

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INDEX

No Witnesses

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's		
1(a) thru 1(x)	4	6

- - - - - - - - -

PROCEEDINGS

JUDGE MILLER: The hearing will be in order. This is a formal hearing before the National Labor Relations Board, in the matter of Desco Vitro-Glaze of Schenectady, Inc., and Local 59, International Association of Marble, Slate, and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers, AFL-CIO; and Local 6, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL-CIO (Desco Vitro-Glaze of Schenectady, Inc.); and Local 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL-CIO, (Desco Vitro-Glaze of Schenectady, Inc.). The Case Numbers are numbers 3-CA-5993, 3-CB-2498-1, and 3-CB-2498-2.

My name is Michael O. Miller, the Administrative Law Judge conducting this hearing. Will Counsel and other Representatives of the parties please state their appearances for the record.

MR. MULKERN: Paul V. Mulkern, Jr., Counsel for the General Counsel, Leo W. O'Brien Federal Building, Albany, New York, 12207.

JUDGE MILLER: For the Employer?

MR. SMITAS: Daniel J. Smitas, 56 Fuller Road, Albany, New York, 12203, for Desco Vitro-Glaze of

5

Schenectady, Inc.

JUDGE MILLER: For the Respondent Unions?

MR. TOCCI: Dominick Tocci, 112 State Street, Albany, New York, appearing for Local Union numbers 6 and Local Union number 16, Bricklayers, Masons, Plasterers.

JUDGE MILLER: For the Charging Party?

MR. LAVENBERG: David Lavenberg, 11 Crestwood Court, Albany, New York, 12208, for Local 59, Marble Polishers.

MR. BOMBASSARO: Gerald Bombassaro, International Representative.

JUDGE MILLER: Your address please.

MR. BOMBASSARO: 1210 Oakmont Street, Pittsburh, Pennsylvania, 15205.

JUDGE MILLER: Would General Counsel introduce the Formal Papers.

MR. MULKERN: I offer into evidence the Formal Papers. They have been marked for identification as General Counsel's Exhibit 1(a) through 1(x) inclusive, with Exhibit 1(x) being an index and description of the entire Exhibit. The Exhibit has already been shown to all parties.

JUDGE MILLER: I take it there is no objection.

MR. SMITAS: No. objection.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Third Region

- -

In the Matter of:

DISCO VITRO-GLAZE OF SCHENECTADY, INC.,

Respondent-Employer

Case No.
3-CA-5903

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO,

Charging Party

- -

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO,

Respondent-Union

Case No.
3-CA-2498-1

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO,

Charging Party

- -

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS, MARBLE AND TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO,

Respondent-Union

Case No.
3-CA-2498-2

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO,

Charging Party

9

Hearing Room, National Labor
Relations Board
Leo W. O'Brien Federal Building
Clinton Avenue and North Pearl
 Street
Albany, New York 12207

Tuesday, August 3, 197[illegible]

The above-entitled matter came on for hearing pursuant to Notice, at 10:40 a.m.

BEFORE:

HONORABLE MICHAEL O. MILLER, Administrative Law Judge

APPEARANCES:

PAUL V. MULKEEN, JR., ESQ.	National Labor Relations Board Leo W. O'Brien Federal Building Clinton Avenue and North Pearl Street, Albany, New York; appearing as Counsel for the General Counsel;
DANIEL J. SMITAS, ESQ.	56 Fuller Road, Albany, New York; appearing on behalf of the Respondent-Employer;
DOMINICK TOCCI, ESQ.	112 State Street, Albany, New York; appearing on behalf of the Respondent-Unions.

INDEX

Witnesses:	Direct	Cross	Redirect	Recross
Charles Johnson	17	27	31	
Joseph T. LePore, Jr.	31	48		
Constantine Psarras	54	86	102 120	103 121
Dimitrios Evangelidis	125	151	173	

Exhibits:	For Identification	In Evidence
General Counsel's		
1(y), 1(z) and 1(aa)	13	13
2	22	24
3	43	54
4 and 5	67	--
6	80	--
7	134	135
Unions'		
1	114	115

MR. MULKERN: At this time, General Counsel calls Charles Johnson.

CHARLES JOHNSON

was called as a witness, by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Johnson, were you ever a member of any labor organization?

A Yes. Local 59, 1927.

Q And you were a member of Local 59 from when to when?

A 1927.

Q Until the present?

A Until the present time.

Q And, did you ever hold a position with Local 59?

A Yes. I was Business Agent, part-time, 1945 to 1959; in 1959, I was steady Business Agent.

Q Until when?

A My retirement in 1971.

Q Now, are you familiar with a Company called Desco Vitro-Glaze of Schenectady, Inc. --

A Yes.

Q -- which is the Respondent in this case?

A Yes.

Q Now, what work do members of Local 59 perform?

MR. SMITAS: I'll object unless we can establish when we're talking about in time.

JUDGE MILLER: I will sustain that objection.

Q (By Mr. Mulkern) What work have members of Local 59, traditionally, performed?

A Local 59, Tile and Marble Helpers, Terrazzo Workers, assist the mechanic in all work; handling raw materials, mixing raw materials; grinding and cleaving of materials.

Q And who do they assist in performing these jobs?

A They assist the mechanic in the installation with the grinding specifically the helpers.

Q Okay. And, these mechanics who they assist in the installation of the product, what Union do they belong to?

A They belong to International BMPIU, assisting tile, marble, terrazzo, plasterers, bricklayers.

Q And what Locals in the Albany-Schenectady area do they belong to?

A Local 6, 16.

Q Okay. And, to your knowledge, has the work of Local 59 members ever changed?

A No. It's primarily the same with different trademarks or different marks on their materials but they're always the same, the installation is the same.

Q Okay. Now, at one time, was there a different type of flooring which was generally applied by the mechanics who were actually assisted by the helpers, different than what is generally being put down today?

A No. It's primarily the same. Different chemicals but the installation remains the same.

Q And, what is the common name used to refer to men in the craft represented by Local 59?

A Tile, marble, terrazzo helpers.

Q Now, after Desco Vitro-Glaze of Schenectady was formed, did there ever come a time when the Company recognized Local 59 as collective bargaining representative for the Tile, Marble and Terrazzo Workers Helpers employed by Desco?

MR. SMITAS: I'll object. That's a conclusion.

JUDGE MILLER: Overruled.

THE WITNESS: Local 59 was the bargaining agent for Desco ever since I was Business Agent.

Q (By Mr. Mulkern) Okay. And, during the time when you were Assistant Business Agent and during the time when you were Business Agent yourself, how did Desco Vitro Glaze hire its tile, marble and terrazzo workers helpers?

A They would call me for a man or at times, they would call me and ask if they could put a man in the Local.

Q So, at times they would hire through you and at other times, they would hire right off the street?

A They would always get permission when they were going to put a man in.

12

Q And did the men that Desco hired on its own ever become Local 59 members?

A Yes.

Q Did they in every instance?

A Yes.

Q Now, how were Local 59's area contracts negotiated?

A Through the contractors, the Tile, Marble and Terrazzo Contractors' Association.

Q And what is this association?

A Consisting of the owners of the Tile, Marble Contractors Association through the Eastern New York Contractors Association.

Q And these are contractors who employ helpers?

A Yes.

Q And, now, was Desco ever a member of this Association?

A No.

Q And did there ever come a time, after Desco was formed, that they entered into a contractual relationship with Local 59?

A They would, if we didn't have an agreement by the time their agreement expired, a new signed agreement, Desco would sign a letter of intent.

Q And how would it come about that they would sign a letter of intent?

A A lawyer would write up a letter for them and they would

13

sign it agreeing to pay all fringe, back wages until the time the contract was signed.

Q Okay. And, did it happen -- did these letters of intent usually come about because Local 59 had been bargaining with the Employer Association past the time when the previous contract expired and then, at that time, rather than have its members go out on strike, Local 59 would sign a letter of intent with Desco Vitro-Glaze which would bind Desco Vitro-Glaze to the contract which was then negotiated?

MR. SMITAS: I'm having an awfully difficult time with the testimony, Mr. Mulkern. First of all, it's very leading and second, really, I'd like to hear the witness testify.

JUDGE MILLER: I think that objection is well-taken.

THE WITNESS: Yes. Local 59 --

JUDGE MILLER: Well, let Counsel ask you the question again in a less leading fashion. Start over again. Also, a less complex question, please.

Q (By Mr. Mulkern) How would it occur that Desco would sign one of these letters of intent with Local 59?

A All members of the Contractors' Association, if we didn't have a contract with them --

Q Why wouldn't you have a contract with them; because it expired?

A The previous contract expired and we didn't have a new one and rather to let the members, contractors, work that didn't belong to the Association, they would sign a letter of intent and they would keep on working and our men wouldn't be unemployed. After the contract was signed, they would pay all fringes and back wages.

Q And by "back wages", do you mean retroactive wages?

A Retroactive.

Q And --

MR. MULKERN: I would like this marked for identification as GC-2.

(Whereupon, General Counsel's Exhibit Number 2 was marked for the purpose of identification.)

Q (By Mr. Mulkern) Now, Mr. Johnson, I show you what's been marked for identification as General Counsel's Exhibit 2 and ask you if this is an example of the letters of intent that you referred to.

A Yes.

Q And, which contract was being negotiated with the Association at the time that this particular letter of intent was signed?

A I believe the 1972 contract. '71 or '72.

Q Perhaps you might like to look to the body of the letter itself and look at the date there.

JUDGE MILLER: Is it apparent from the body of the letter itself?

MR. MULKERN: Yes.

JUDGE MILLER: Then, move on.

MR. MULKERN: I'll withdraw the question.

Q (by Mr. Mulkern) Now, I'd like you to take a look at this letter and, more specifically, at the signature on that letter and ask you if you can identify the signature on that letter.

A Yes. Renato Petrucco.

Q And, who is Renato Petrucco?

A He was the owner of the Desco Vitro-Glaze, the original owner.

MR. MULKERN: Okay. I would ask that this letter of intent be received into evidence as General Counsel's Exhibit 2.

MR. SMITAS: I object on the basis of relevancy. This document has not been connected with the dates of the alleged violations in the Complaint. This is a document which establishes a letter of intent dated back, by itself, is dated 5/8/67 and the witness has not related it to any present contract, present circumstances, present events which are outlined in the Complaint.

MR. MULKERN: I would merely state that this is an indication of a contract into which the Respondent Company and Local 53 had entered into in 1967, a collective bargaining agreement which, with it, brings a continuing presumption of majority status, unless that majority status is otherwise disproved.

JUDGE MILLER: All right. I think the history in a case like this is relevant. I'll receive it.

(Thereupon, the aforementioned document, heretofore marked as General Counsel's Exhibit Number 2, was received into evidence.)

Q (By Mr. Mulkern) Now, during the time that you were Assistant Business Agent and during the time that you were full time Business Agent, how often did Desco sign these letters of intent?

A They always signed the contract, if we had one, when the other expired or they would sign a letter of intent. How many contracts we had in between, I wouldn't say.

Q Right. And, during the time that you were Assistant Business Agent and during the time that you were full-time Business Agent, do you know whether or not Desco abided by the Association contract?

A To the best of my knowledge, they always did.

Q What about the retroactivity portion of the contracts and the letters of intent?

A They always lived up to it, paid their men all their fringes and back wages.

Q Now, during the time that you were Assistant Business Agent and during the time that you were full-time Business Agent, what Union, if any, represented Desco's tile, marble and terrazzo workers helpers?

A Local 59.

Q And was there ever a time during this period when a majority of Desco's tile, marble and terrazzo workers helpers were not Local 59 members?

A No.

Q Now, you mentioned before that Mr. Petrucco was associated with the Company at the time that that letter of intent was signed in 1967. Was there another individual who was also one of the owners of the Company at that time and following that time?

A I believe Mr. LePore was.

Q And did there later come a time when Mr. LePore, himself, sold the Company?

A Yes.

Q And to whom did he sell the Company?

A I believe to Mr. Cordi.

Q Were there negotiations between Local 59 and the Contractors' Association for a contract to succeed the 1967 through 1970 contract?

A Yes.

Q And, when would these negotiations have taken place for a contract to succeed the '67 through '70 contract?

A 1970.

Q Okay. And, do you know whether or not Mr. LePore signed a letter of intent similar to the one signed by Mr. Petrucco which is in evidence as General Counsel's Exhibit Number 2?

MR. SMITAS: I'll object to that. The document speaks for itself and is the best evidence of the existence of such a document.

JUDGE MILLER: Mr. Mulkern?

MR. MULKERN: I would merely state that, through a perusal of Local 59's records, they have been unable to find that document and I believe that there is an exception to the best evidence rule which states that when a document is unabl to be found, that oral testimony can be received to substantiate a fact.

JUDGE MILLER: You'll have to establish that there's bee an effort made to search for the document.

MR. MULKERN: That will be through another witness.

JUDGE MILLER: At this time, subject to a later motion to strike, I'll overrule the objection.

Q (By Mr. Mulkern) So, once again, do you know whether or not Mr. LePore signed a letter of intent similar to the one signed by Mr. Petrucco which is in evidence as General Counsel's Exhibit 2?

A Yes.

Q And, do you know whether or not Desco abided by the terms of the 1970 through 1973 contract while you were Business Agent?

A While I was Business Agent, they did.

MR. MULKERN: That's all.

MR. SAITAS: I'll make a motion to strike his testimony.

JUDGE MILLER: Mr. Mulkern indicated the efforts to find the documents would be made through a subsequent witness. It was the intent of my ruling that, at that time, if there's no such testimony, then you can move to strike. I will deny it at this time. In what order would you gentlemen like to cross examine him?

MR. TOCCI: I just have one question I think I missed.

CROSS EXAMINATION

Q (By Mr. Tocci) When were you the Business Agent, for what years, Mr. Johnson?

A I was part-time in the middle fifties, late fifties and full-time until '71.

Q The end of '71?

A Yes.

MR. TOCCI: I have no further questions.

JUDGE MILLER: Mr. Saitas?

Q (By Mr. Saitas) Mr. Johnson, you only negotiate for or you only did negotiate contracts which covered the local Albany, New York area, is that correct?

A Our jurisdiction took in quite a few counties.

Q It's only the jurisdiction as contained in the agreement that the Contractors' Association negotiated with Local 59;

PAGES 21 TO 29 OMITTED FOR PAGINATION

PURPOSES ONLY .

REDIRECT EXAMINATION

Q (By Mr. Mulkern) Mr. Johnson, if there were men hired from another jurisdiction, where would these men have been referred from?

A The helpers Local in that area.

MR. MULKERN: No further questions.

JUDGE MILLER: All right. Thank you, Mr. Johnson.

(Witness excused.)

MR. MULKERN: The General Counsel calls Mr. Joseph LePore.

JOSEPH T. LePORE, JR.

was called as a witness, by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE MILLER: Be seated and state your full name.

THE WITNESS: My name is Joseph LePore, Jr.

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. LePore, were you formerly associated with Desco Vitro-Glaze of Schenectady, Inc.?

A Yes.

Q And are you testifying today under subpoena by the NLRB?

A Yes.

Q And how long were you associated with Desco Vitro-Glaze of Schenectady?

A I formed the corporation. I was the original owner of the corporation and originally, it started as a company.

Q When did it start, Mr. LePore?

A In 19, I think, '54. '53, '54, in that area. It started as a company and then we incorporated it on at a later date.

Q And, what office did you hold with the company?

A President and Treasurer.

Q And when did you become President of Desco?

A From the original status of incorporation. I don't recall the date.

Q And, were you the sole owner of the company during that period?

A No.

Q Who else had an ownership interest?

A Renato Petrucco had a half interest in the corporation at the time.

Q And, during this period of time that you were associated with Desco, did you employ tile, marble and terrazzo workers helpers?

A Yes.

Q Might I just ask at this time, when did you relinquish control of Desco Vitro-Glaze of Schenectady?

A January 18, 1973.

Q And you sold it at that time?

A I sold it.

Q And to whom did you sell it?

A Joseph Cordi.

Q Now, was there any Union recognized as collective bargaining agent for the tile, marble and terrazzo workers helpers that you employed at Desco Vitro-Glaze of Schenectady?

A Yes. We employed and recognized Local 59.

Q You recognized Local 59 as the collective bargaining agent for the helpers that you employed?

A Yes.

Q And, did Local 59 represent these helpers from the time that you took over the company?

A From the very first insertion of these materials that were introduced in this area by myself, we have used the tile helpers and terrazzo grinders, Local 59 men to mix, grind, prepare, carry, finish floors.

Q And, were the helpers Local 59 -- was Local 59 the recognized collective bargaining agent of the terrazzo workers helpers when you left the company in 1973?

A Yes.

Q And, I show you what's been introduced into evidence as General Counsel's Exhibit Number 2, and ask you if that is the signature of your partner, Renato Petrucco.

A Definitely.

Q Now, was there ever a change in the work that the helpers performed for your company between 1953 and 1954 when the company was established and 1973 when you sold the company to Mr. Cordi?

A No.

Q Were there changes in materials, though, over that twenty-year period?

A Yes. There were new materials that were introduced of a chemical nature but principally, the materials were pretty much in the same category of installing; mixing instructions were slightly different because of the different composition of the chemicals in the materials but the application procedures were always pretty much the same.

Q Now, you mentioned, Mr. LePore, that you introduced a new type of flooring to the capital district area. What was that type of flooring that you introduced?

A I have to refer back to the old method of terrazzo floors which was about the only type of floors we carried at the time, terrazzo and cement floors as composition floors. I brought from the New York City and Jersey area up here the chemical type mixed floors which were a latex terrazzo which latex was used to mix with marble chips and put down like original cement terrazzo only in a thin setting. This type of terrazzo was put down by mechanics in Local 6, 16, applied by them, mixed by the helpers and ground by the helpers, finished by the helpers. Now, that was only one type. Later on, the acrylic type terrazzo was introduced by the manufacturers.

Q When would this have been?

A From '54, I think acrylic came in probably about in the sixties, early sixties. Then we had the latex composition type of flooring which is just a solid colored type material that looks like a battleship when it is completed. It is put down by a trowel, mixed by the helpers and ground by the helpers with dry sanding machines. They did all the grinding and mixing applications and finishing applications of this type of work.

Q Now, how about the flooring products that were being applied in, let's say the last year that you were associated with Desco Vitro-Glaze?

A By that time, a couple of other new floors were introduced, the epoxy type composition floors and the acrylic latex type, a combination of the two that was introduced. So, these were all new floors that came in from '54 to '73 but the latest of the new floors, I think, around '65, from then on nothing new ever came in. But, the work was always the same.

Q You mean, in effect, since '65, brand names have changed--

JUDGE MILLER: You're leading the witness again, Mr. Mulkern.

Q (By Mr. Mulkern) What has changed since 1965 in the flooring field?

A Oh, not very much. There might have been some additives to the original composition of floors but practically most of them are all the same.

Q And has this held true from 1973 to the present or at least to February of 1975?

MR. TOCCI: I object to that unless there is a foundation laid as to his association with the industry since '73.

JUDGE MILLER: I think that point is well-taken.

Q (By Mr. Mulkern) In any event, though, at the time that you left Desco Vitro-Glaze, had the basic work performed by the helpers changed since 1953 when you took over the company?

A No, not very much. Hardly at all.

Q And, during this entire period, who did the installation of the material?

A I don't quite follow your question.

Q During the period that you owned the company, you testified that the helpers did the grinding, the mixing, the loading, the unloading, whatever, the grouting. Who did the actual installation of the product over this period?

A The mechanics from Local 6 and 16, trowel men.

Q And, did you have contracts with Locals 6 and 16 covering those mechanics during this period?

A We belonged to the Northeastern Employers Association who we gave our rights to get contractual relations with those Unions and they handled it and we followed anything they accepted.

Q Now, during the time that you owned the company, how many of the tile, marble and terrazzo workers helpers were members of Local 59?

A Well, except when we brought in a man of our own -- when Local 59 did not have any men available, we would take in a new man and break him in and call Mr. Johnson at the time and tell him that we had a new man that we would like to try out and if he was a man that would take to the trade, why, we would keep him and it would be up to Mr. Johnson to get him into the Union.

Q Okay. Now, during the time that you owned Desco, what terms and conditions of employment did the tile, marble and terrazzo workers helpers work under.

JUDGE MILLER: I'm going to stop you for a second, Mr. Mulkern. You keep using the expression "owned". We're talking about a period when there was a partnership or proprietorship and then a corporation. I don't want the record to be confused.

MR. MULKERN: Fine.

Q (By Mr. Mulkern) During this period from 1953-1954 to 1973, what terms and conditions of employment did the tile, marble and terrazzo workers helpers work under?

A They worked under the contract rules we had or, let's say, the prevailing rate of wages that were incurred at that time and we paid them the wages while they were working for us.

Q And where were the wages found?

A They were established by Local 59. Any other city we were working in, we would work under the Local of terrazzo helpers in that area, which we worked throughout New York State.

Q And, were these helpers paid under the contractual rate that Local 59 negotiated with the Contractors Association?

A Definitely.

MR. SMITAS: I'm going to object to that question unless it's established what Contractors' Association.

MR. MULKERN: I believe that's been brought out a number of times already.

Q (By Mr. Mulkern) What Contractors' Association?

A Every contract for every year that we were in business, we paid the going Union rate that Local 59 had established with the contractors and we paid that rate and fringes and benefits.

Q And what Contractors' Association was this?

A It was the local Tile, Marble and Terrazzo Contractors in the area that dealt with Local 59 to establish a contract as to the rate of wages.

Q Right. And, if there was a provision for retroactive wages under the contract, would the helpers employed by Desco receive these retroactive wages during this 1953 to 1973 period?

A They always did.

Q Now, how did you know what the tile, marble and terrazzo workers helpers, what wages and fringe benefits they were to receive?

A Well, that was printed in a book by Local 59 which was negotiated with the contractors and we had to follow those wage rates.

Q Right. Now, you mentioned before that Mr. Cordi purchased the company around 1973. Prior to Cordi's actual purchase of the company, did you know him?

A Yes.

Q And, in what way did you know him?

MR. SMITAS: I'll object unless he can establish some relevancy of this type of a question.

JUDGE MILLER: I'll allow the question. Continue. Overruled.

THE WITNESS: He came to work for me with the intent, at a future date, to buy into the corporation and he had been with me and was trained by me for about a year when finally I sold the corporation to him. So, he knew the workings of that corporation before he bought it.

Q (By Mr. Mulkern) So, he had worked there for a year before he bought it.

A Right.

Q And, did you ever communicate with Mr. Cordi regarding which Unions represented which employees at Desco?

A Unless he was blind, he saw what was going on in that office. He knew what Unions we were dealing with all the time. He was on jobs that these men were working on. He saw actual installations, talked to these men. He knew which Locals they belonged to. Other than that, I don't know what else I can add to it.

MR. MULKERN: That's all.

JUDGE MILLER: Before we cross examine, just so the record is complete for me, I'm sure everybody else understands the processes or work, do you intend to ask another witness what the grinding is and what the mixing is?

MR. MULKERN: I was going to but why don't we do that with Mr. LePore now since he's clearly an expert.

JUDGE MILLER: Excuse me for jumping in at this point but I think this witness is the one to ask.

MR. SMITAS: These questions are related to processes up to 1973.

JUDGE MILLER: When he was there, yes, with that understanding.

MR. SMITAS: They don't relate to processes or things that may exist at the present time.

MR. MULKERN: Well, that's your contention.

JUDGE MILLER: At least up through 1973, when he was there, I'd like to know what he means by grinding and mixing and washing; what are the various steps?

THE WITNESS: Well, we'll take the first type of flooring introduced in the area, it was called a latex composition floor. This consisted of sand, aluminum cement and a latex liquid. It was mixed together, certain proportions of powdered sand and cement and a certain amount of liquid, mixed like you would mix cement. And large quantities were mixed in mixers, mechanical mixers by the terrazzo helpers. They, in turn, after it was mixed, would place it on the floor alongside of the mechanic. The mechanic would be a trowel ma from Local 6 or 16. He would trowel that composition to abou a quarter inch thick on the floor. After it had been set up, it would be scraped with a scraper edge or trowel edge, swept off, all little pieces of sand, loose sand or anything like that swept off. Then the helper would mix a grouting material, which is a fine powder of the latex composition, sand being missing. The only thing missing, the same latex liquid. This mix would be made into a paste and they would trowel that on very thing and it would go all into the pores of the composition that was on the floor. After that dried, it would be ground. It would be ground with a sanding disc, large sixteen-inch sanding disc like you see men polish floors with, but heavy industrial. They would sand that over very fully, smoothing it up, sweep it up and then they would re-grout it again a second time, re-sand it with finer papers so it gleamed like this tabletop, swept up, cleaned up and then there would be dressings, liquid-type dressings put on that were of the latex chemical nature. That would be the finished floor. And the helpers would apply the dress coatings which there would be two of them.

That's the composition. Now, there were two or three various types of floors of that nature, one in acrylic and one in epoxy, the same type. Same applications only in the epoxy type, grinding was used with Carborundum stones and heavy duty machines.

Now, we'll go into the terrazzo type floors. We used the latex again and there was also an acrylic type and an epoxy type terrazzo. Now, all of these floors are thin set, getting away from the heavy type of cement terrazzo floors which needed a two and a half inch bed of sand and on top of that they put in two inches of cement, sand and cement and on top of that they put in three quarters of an inch of terrazzo. We've ground that down now. The theory of this type of flooring was to get away from the weight factor of the old fashioned terrazzos. Now, the thin set terrazzos would be applied on a finished cement terrazzo floor and also we had a method of putting down over wood.

Now, we'll start with the wood floor. If this room had a plywood floor and you wanted a terrazzo floor applied here, we would put down a fifteen-pound felted paper. The helpers would do this. We would apply lathe over this paper, diamond-meshed lathe, staple it down and the helpers did this.

Then we would mix a composition of latex and sand and we would fill the wire with that, just fill the top of the wire with that. The helpers would mix that and the trowel men would apply the material down. Over this we would put latex terrazzo. Now, latex terrazzo was a combination of latex milk, marble chips, aluminum cement and sometimes a fine sand would be in it. So, actually, the composition was mostly marble in graded size marble so that if it was going to be a thin floor, it would be smaller chips. If it was going to be a thick floor, it would be chips of three-quarters of an inch in size, roughly. Now, this would be applied -- rather, mixed first by the helpers. A certain amount of latex and -- I left one item out. There would be, in that mixture of the marble chips, grout powders. Now, the grout powder is for the cement and sand, fine sand mix, mixed with the chips. This would all be mixed with the latex until it was into a consistent paste form but not too thick that it could not be troweled. And a mechanic would trowel this to approximately five-eighths of an inch thick on the floor. Mixing done, again, by the helpers and carried by the helpers to the mechanic and the mechanic would put it down.

After this was troweled and dried which took about four or five days, they would come in and the helpers would mix latex and grout and apply it over this rough terrazzo floor that was put down. When this composition had dried on top, then from then on the helpers finished the job.

JUDGE MILLER: Excuse me. That last batch was put down by the trowel men?

THE WITNESS: By the trowel men, yes.

JUDGE MILLER: Off the record.

(Whereupon, a short recess was taken.)

JUDGE MILLER: Okay. Continue.

THE WITNESS: After this application which was troweled down by the mechanics, is dry, from the installation of the marble chips section and the grout application, it took about six-seven days. Then the helpers would come in with heavy grinding terrazzo machines with Carborundum stones underneath them and would grind these floors with water. It was a very sloppy but dirty job. These men did this work and they would grind, what we would call a first grind, with rough stones. They would grind the entire floor. They would wash it. They would vacuum it up so it was absolutely clean. And when that water dried, the helper would mix a grout and latex and put it down themselves. They used the trowel to do this. They were allowed to do this. All the jobs we worked on throughout the State of New York, I was never stopped by any other Union. And, when that grout dried, they went in again with the heavy grinding machines only with very fine stones underneath it and sort of polished the marble very thoroughly. Then, of course they washed it down again and vacuumed it and when it was clean and dry, they put down two and three coats of clear penetrating sealer that would seal the marble and the cement so that you would have a floor that was perfectly sealed and that would be the end of the operation.

There's one more operation which we did, was outdoor walking roofdecks, traffic-bearing roofdecks. Now, the same operation I described of putting down the wire lathe would be done on a wood deck outdoors and the latex composition would be put on top. And we would do the same thing on a roofdeck where we had a concrete floor, eliminating the wire lathe but we would use a slipsheet which was a piece of fifteen-pound asbestos felt, lay that down loose on a deck and start our successive coatings on top of that until we had a buildup of almost three-eighths of an inch.

JUDGE MILLER: The same steps?

THE WITNESS: The same steps all the way through and the helpers did all the mixing, grinding, finishing.

JUDGE MILLER: I think that helps me understand the situation, at least up until 1973.

MR. MULKERN: Might I just ask one or two more questions?

JUDGE MILLER: Yes.

(Whereupon, General Counsel's Exhibit Number 3 was marked for the purpose of identification.)

THE WITNESS: Your Honor, there seems to be some implication here that I don't quite understand, the Attorney stating up until 1973.

JUDGE MILLER: I think we ought to leave that to his questions on cross examination. I'd rather not get in a dialogue with the witness.

Q (By Mr. Mulkern) Now, Mr. LePore, I show you what's been marked for identification as General Counsel's Exhibit 3. Could you identify that for me, please?

A Yes. It was a letter sent to me by NADA in '68. They sent a lot of letters to me and I stuck them in a file.

Q Did you actually make application to NADA or is this just an unsolicited letter?

A I doubt if I made application. I knew all the people that were affiliated with it. I didn't have to make an application because they knew me well enough that they kept sending me literature all the time but I didn't pay any attention to it.

Q In any event, did you, by receiving that letter or by any other correspondence at any time, during the time that you were associated with Desco, did you ever empower NADA to act in your behalf in the negotiation of any type of collective bargaining agreement?

A Not that I can recall.

Q One other thing I just wanted to skirt on briefly, the processes that you just related to Judge Miller, were those the same processes -- in other words, the laying down, the them once in a while.

MR. TOCCI: I move to strike this as not being responsive.

MR. MULKERN: I believe it is responsive and I believe that the witness should be permitted to answer the question.

MR. TOCCI: Well, I don't want him to answer on the basis of what he heard from somebody else.

JUDGE MILLER: I will not permit testimony as to what he was told was going on.

Q (By Mr. Tocci) From you own knowledge -- the question I gave you, I maybe should have prefaced it, from your own knowledge and observation -- now I'm asking you to answer this question.

A I didn't see it.

Q So that you didn't know anything that was going on from your own knowledge.

A From my own knowledge, no.

Q Now, you indicated that the period up until January 18, '73, that you did have a contract with Bricklayers Locak 6 and 16?

A I, personally, didn't have a contract. My bargaining rights were given to the Northeastern Contractors' Association and they handled it and, belonging to the Association, I was obligated to follow any contracts that they culminated.

Q Did you also belong -- this letter of intent that has been put in refers to a Capital District Tile, Marble and

Terrazzo Contractors Association. Did you belong to that Association?

A No, I didn't.

Q But you did have a contract with Local 6 and 16.

A As far as my contract was concerned, I explained it a minute ago, the bargaining rights were given to the Eastern Employers Association. I never signed a contract, personally.

Q With Local 6 and 16?

A 6 and 16, right.

Q Did you have a contract that you used to abide by as far as Local 6 and 16 rates, fringe benefits and working conditions?

A The two Locals sent us a letter of intent after negotiations were culminated with the construction employers and we would follow the rate that was listed in the letters they sent us and after that, they sent us a book of the rules, regulations and wages and benefits, and fringe benefits and we would follow them and the men were paid that.

Q I'm not trying to mislead you or anything but, in your industry, there are two contracts that Local 6 and 16 have. One is known as the tile, marble and terrazzo contract and the other one is known as the mason contract. Now, was Desco, during your period, party to both of those agreements with Locals 6 and 16 or just one of them?

A We hired trowel men from both of those Locals.

Q I understand that. What contract were you under, the tile and terrazzo contract or the building, called masons contract?

A Generally it would be the terrazzo contract. But, when the terrazzo contractors did not have trowel men available, we would take trowel men from the bricklayers and use them to do the work because that was the way the material was put down, by trowel.

MR. TOCCI: I see. I have no further questions.

JUDGE MILLER: Any further cross examination, Mr. Smitas?

Q (By Mr. Smitas) The name of the Association that you gave the bargaining rights to, wasn't that the Eastern New York Construction Employers, Inc.?

A That's right.

Q There really isn't any Association called the Northeast Contractors.

A It's quite a while since I've been out of there and I just don't remember the correct name.

Q And the Association that you designated your bargaining rights to was the Eastern New York Construction Employers, Inc.; is that correct?

A That's correct.

Q Now, when you worked in your company, Mr. LePore, as President and Treasurer, were you the inside man in the company?

received.

(Whereupon, the aforementioned document, heretofore marked as General Counsel's Exhibit Number 3, was received into evidence.)

JUDGE MILLER: Off the record.

(Discussion had off the record.)

MR. MULKERN: The General Counsel calls Constantine Psarras.

CONSTANTINE PSARRAS

was called as a witness, by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE MILLER: State your full name and spell your last name for us.

THE WITNESS: Constantine Psarras, P-S-A-double R-A-S.

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Psarras, was there a time when you were employed by Desco Vitro-Glaze of Schenectady, Inc.?

A Yes.

Q And when did you start working there?

A '74 in October sometime.

Q October of '74. And how did you hear about the job?

A Through Chris Glansis.

Q And who is Chris Glansis?

A He was a helper, the kind of job they was doing there and I asked him to find me a job if he can.

Q Okay. Now, directing your attention to the first day that you visited the job site, the Desco Vitro-Glaze job site, who did you go with?

A With Chris Glansis.

Q And who did he introduce you to?

A Mr. King.

Q Mr. King?

A Yes. Kenny King.

Q Kenny King. And who is Kenny King?

A He was the super in the job.

Q And where was this job located?

A Down at the South Mall on Swan Street.

Q And what did Mr. King tell you?

A He told me I'm going to be a helper and I'm going to be -- any other details or what exactly I do but they are the helpers which was what Chris Glansis was at the time there.

Q Okay. And so did Mr. Glansis show you what to do?

A Yeah.

Q And what was that that he showed you to do?

A He showed me how to use all the machines to mix the material. He told me we have to unload the material from the trucks, load them at the time we finish the job, carry them to the mechanics, pour for them, grind it because a lot of times there was some concrete, I don't know, we was taking off some lines; grained it, and then he explained to me in the time after what further else we've got to do, like the finish polishing and the grinding of the materials using the chemicals.

Q Now, did you ever do any installation work?

A No. I never did any installation work.

Q Who did the installation work?

A The mechanics.

Q And, now, after you came on the job for Desco Vitro-Glaze, did you join any labor organization?

A Yeah. It was Local 59.

Q And would you explain to us how it came about that you joined Local 59?

A Well, before I even got the job, I was of the idea that I got to join the Union through Glansis which he was a helper at the time and the same thing I hear from Mr. King. He says, you're going to have to join the Union, you got to pay about three hundred dollars to be a member so you can be allowed to be on the job.

Q So, when did you actually -- how did you actually join; what were the mechanics of you joining?

A Chris Glansis called up the Business Agent at the time, I don't know who exactly and then the President of the Union stopped over one day a few days after, I remember.

Q And who was the President of Local 59?

A It was Mr. Glogowski.

Q Okay. And what did he do when he stopped over?

A I give it to him, a deposit for the initiation fee and he told me in sixty days I've got to pay in full and I would receive my book after that.

Q Okay. And when did you finish paying your initiation fee to Local 59?

A That was sometime in December.

Q Okay. And, after you finished paying the initiation fee and this would have been in December, did you receive anything from Local 59?

A Yeah. I received my book which I've still got it.

Q And, have you continued to maintain your membership in Local 59?

A Yes.

Q Do you know an individual named John Sitiriou?

A Yes.

Q What is the correct pronunciation of his name?

A John Sitiriou.

Q And who is John Sitiriou?

A He's somebody we were bringing into the job because at that time they was needing more helpers so we told him to come and join the job over there, to start working there.

Q Okay. And did you see him the first day he was on the job?

A Yeah. That's who I was working with.

Q Okay. And who showed him what to do?

A I showed him what to do.

Q And what job was this on?

A At that time we was working down in the Health Spa and we was unloading from the trucks and carrying inside the material and we stores it all, we bring it in right by the mixers so there was other helpers we have there that was mixing the material.

Q What did the other helpers do with the material after they had mixed it?

A They poured it in a wheelbarrow or if we mix it in a pail, you carry it to the mechanics and you pour it for them.

Q You'd pour it, where would you pour it?

A You pour it in different ways. Sometimes you carry it with a wheelbarrow, sometimes you carry it with little four-wheel trucks and put the pails on it.

Q And you just spill it on the floor?

A Yeah. You put it in the places which the mechanic is going to tell you. You can't just put it anywhere you want.

Q Okay. What kind of work was this, this business of bringing -- loading, unloading the trucks and bringing it in?

A During the time I was there, as I found out, it was helpers work.

MR. SMITAS: I'll object and make a move to strike that.

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is one rule of the Union.

Q And did he say that it was a rule of the helpers Union?

A Yeah. That's the way he keep this seventy-five cents. Otherwise he couldn't keep it.

Q Okay. So, in other words, what you're saying is that Mr. King told --

MR. SMITAS: I object to the form of the question.

JUDGE MILLER: Sustained.

Q (By Mr. Mulhern) Now, directing your attention to on or about January 24th, 1975, did you see Local 59 Business Agent David Lavenberg on the job site?

A He came -- no. It was Tuesday?

Q Quite frankly, at this point, I don't know what day of the week it was.

A I didn't work Monday and on Tuesday, if it was the 24th, was the day we had the problem with Hamilton and Sitiriou and David Lavenberg, because they was taking the money back for joining the Union.

Q Well, did you see Mr. Sitiriou actually pay an initiation fee?

A Yeah, well he paid --

MR. SMITAS: I'm going to object.

THE WITNESS: He did.

MR. SMITAS: And, I'd like to have the witness instructed that the questions, when I make an objection --

JUDGE MILLER: All right. Mr. Psarras, when any of the Attorneys objects to a question that's being asked, it's because he feels that for one reason or another, you should not answer that question. So, don't answer until after I've said to answer or directed you not to answer the question. What is the nature of your objection?

MR. SWITAS: There's no proper foundation to establish a payment of money for initiation fee. It's pure hearsay. I don't see how we can -- he can testify to the fact that he saw money being passed between two individuals, if that has any relevancy in this case at all, but he certainly can't testify that monies were passed as initiation fee money unless they remarked United States currency.

JUDGE MILLER: Let's get a description of what the whole event was. I think it's relevant. I'm going to overrule your objection to that extent. Let's get a description of the event from the witness.

MR. MULKERN: Now, directing your attention to on or about January 24th, 1975, did you see any employees join Local 59?

MR. TOCCI: I object to the form of the question. Joining is a conclusion.

Q (By Mr. Mulkern) Did you see any employees speak with David Lavenberg?

A Yes.

Q And where was this?

A It was in the Health Spa and it was around the afternoon and I witnessed it because me and three other guys were witness for two new guys to join the Union because you've got to have people to sign for you to join the Union.

Q Okay. And who were these two individuals who were joining the Union?

A It was John Sitiriou and Joe Hamilton.

Q Okay. And who is Hamilton?

A Hamilton was a guy which was working for a long time in the company.

Q Okay. And what type of work was he doing?

A He was doing helpers job, same I was doing.

MR. SMITAS: I'm going to object.

JUDGE MILLER: Overruled.

Q (By Mr. Mulkern) And, did you see any payment made to Mr. Lavenberg by Mr. Hamilton and Mr. Sitiriou?

A Yes. I see it.

Q What did you see?

A Sitiriou deposited a hundred dollars and Hamilton deposited -- I don't remember how much he had deposited, I think the same amount, because I witnessed it.

MR. SMITAS: I'll object to anything he thinks.

JUDGE MILLER: I'll sustain that. I'll strike that portion.

Q (By Mr. Mulkern) And did Mr. Hamilton and Mr. Sitiriou fill out applications?

A Yes, they did.

Q And, how do you know that they filled out applications?

A Because I witnessed for them. I was right there in front of them at the time they filled out the application.

MR. MULKERN: I'd like this marked for identification as GC-4 and this marked as GC-5.

(Whereupon, General Counsel's Exhibits Numbers 4 and 5 were marked for the purpose of identification.)

Q (By Mr. Mulkern) Now, Mr. Psarras, I show you what's been marked for identification as General Counsel's Exhibit 4 and ask you if you can identify that.

A Yes. That's my signature right here.

Q And what is that? Disregard the writing --

A It's my application to join Local 59.

Q And who filled out that application?

A Mr. Lavenberg.

Q And in whose behalf did he fill it out?

A John Sitiriou.

Q Okay. And that is your signature as a witness?

A Yeah. Right here.

Q And, I show you what's been marked for identification as GC Exhibit 5 and ask youif you can identify that.

A That's right.

Q What's that? What is GC-5?

A That's an application for the Union.

Q And who was that made out for?

A That's Hamilton, Joe Hamilton.

Q And, did you sign this application also?

A Yes, I did, right there.

Q That's your signature?

A Yes.

MR. MULKERN: I would ask that GC-4 and 5 be received into evidence.

JUDGE MILLER: Any objection?

MR. TOCCI: Yes, I object, at least for the present until there is an explanation of the writing that appears on there "application void 1/27/75 refund".

MR. MULKERN: I would state at this time that an explanation will be made for that writing on both of those Exhibits by a later witness and, as a matter of fact, I would stipulate that I was only asking that the Exhibit be received for the writing on it aside from that writing in the middle.

JUDGE MILLER: All right, subject --

MR. TOCCI: In other words, is this being offered to show just that he witnessed a certain signature on a certain date or is it being offered as an application for membership to the Union?

application form. I mean -- and I think, in view of the fact that "application void refund" is on there, even needs to go further that they may not have understood what this document is.

MR. MULKERN: I will withdraw my request that it be placed into evidence at this time and I will place it into evidence by another witness.

MR. SMITAS: Okay.

JUDGE MILLER: You saved me the problem of ruling on these various objections. I assume that you are prepared to put on Mr. Lavenberg at some point in this proceeding.

MR. MULKERN: Of course.

JUDGE MILLER: Mr. Sitiriou and Mr. Hamilton, are they scheduled to be witnesses?

MR. MULKERN: Perhaps, depending upon what happens.

JUDGE MILLER: All right. Let's withhold the offer at this time.

Q (By Mr. Mulkern) Did you witness Mr. Sitiriou and Mr. Hamilton sign the applications which have been marked for identification as GC-4 and 5?

A I don't know how you call it. There was a blue paper and I read it as application for my Union and I signed it and I witnessed it. Maybe not as blue as the photocopy. I don't know what it is. As far as I'm concerned, at that time it was blue and almost the same like this one, little bit of

Q Yes.

A Mr. Lavenberg said to them in sixty days they've got to come up with the rest of the money and then they were going to receive the book.

Q Did he say anything to pressure either one of them into making out that application?

MR. TOCCI: I object.

JUDGE MILLER: That's a conclusion.

MR. MULKERN: I would merely state at this time that Mr. Cordi later made a statement that these individuals had been pressured and I think at this juncture it would be advisable to ask Mr. Psarras the question in that context.

JUDGE MILLER: I think a question whether someone was pressured to join calls for a conclusion. You may ask what else was said or what physical gestures were made, if any, but the conclusion as to pressure, I think, is objectionable.

Q (By Mr. Mulkern) Do you recall anything else that Mr. Lavenberg said to the two individuals about joining Local 59?

A No.

Q Okay. Now, did there come a time on January 24th, 1975, after Sitiriou and Hamilton applied for membership in Local 59, that Kenny King came back on the job site or came on the job site?

A Yeah, he did, about an hour later.

Q And did he have a conversation with Sitiriou?

A Yes.

Q And did you witness this conversation?

A Yes.

Q And what did he say to Sitiriou and what did Sitiriou say to him?

MR. TOCCI: I object once again as to Local 6 and 10 that whatever Mr. Sitiriou said should not be taken against us in this case.

JUDGE MILLER: All right. I will overrule that objection. Obviously, in any case where you have several Respondents, you're going to have this problem. We have to evaluate the evidence as it applies to each of the Respondents. Proceed.

MR. TOCCI: Well, rather than my objecting all the way through, I will take that that is a standing --

JUDGE MILLER: Always.

MR. TOCCI: Where we're not present.

JUDGE MILLER: You're not present or your agents are not present, obviously. Proceed.

Q (By Mr. Mulkern) Okay. So, what did King say to Sitiriou and what did Sitiriou say to King?

A King says that David was here and took money out of you because Hamilton tell me he was here, he took a hundred dollars from him and he joined the Union. Did you, too? He says, yes.

Q Who says "yes"?

A Sitiriou. So, he says, all right, we'll find out and he left. We was working together at the time, me and John.

Q Okay. Do you recall King saying anything else to Sitiriou?

A No, not that I remember.

Q Do you recall his saying --

MR. SHITAS: Objection. He already testified that he doesn't recall anything else, and I'm not going to allow Counsel for General Counsel to start putting words into the witness' mouth through questions.

MR. MULKERN: I believe Counsel for the General Counsel has the right --

MR. SHITAS: He can show him affidavits or something else if he wants.

MR. MULKERN: -- to refresh his recollection by pointing him to a particular word.

JUDGE MILLER: I will permit refreshing recollection by use of questions always noting that I have to rule on credibility.

MR. MULKERN: Of course.

JUDGE MILLER: And leading questions do not help me greatly. Proceed.

Q (by Mr. Mulkern) Do you recall him saying anything about whether Sitiriou was supposed to join Local 597?

A No, I can't recall.

Q Now, directing your attention to on or about January 29th, 1975, did you have a conversation on that day with King?

A Yeah. That was the day which Mr. King approached me and he tells me --

Q Where did this conversation take place?

A In one of the wings where we was working, the top floor.

Q And do you remember about what time it was?

A It was afternoon, after 3:00 o'clock.

Q Okay. And was anyone else present in this conversation?

A At the time I was working with Ali.

Q Now, what did King say to you and what did you say back?

A He says to me the company decide to not have any more helpers, so instead of losing your job, do you mind if you become a mechanic. I say, what do you mean, how am I going to become a mechanic? He said, you're going to join another Union but you're still going to do the same job as a helper you are now but we're going to stop having anything to do with the helpers. So, what do you want to do, he says. I say, I want the job because I need the job. So I said to him, I don't care.

Q Okay. Now, directing your attention to on or about January 31st, 1975, were you approached by John Segado?

A Yeah, that was the day --

Q Who is John Segado?

A He's another helper.

Q Okay. And where did he approach you?

A That time, he was like, after Kenny King, if Kenny King was not on the job, he was the man to tell us what to do.

MR. SHIPAS: I'm going to object to any conversation between two employees on the job.

MR. MULHERN: We don't even have to go into the conversation.

Q (By Mr. Mulhern) As a result of the conversation with Mr. Segado, what did you do?

A I followed him.

Q Okay. And where did you follow him?

A He took me down in the office they have in the Hall somewhere.

Q The job site office?

A Yeah. I don't know how you call it.

Q Okay. And what did -- who was at the job site office when you got there?

A There was Mr. Cordi, there was Vince from the Local 16.

Q Do you know Vince's last name?

A I don't know. If I see it, maybe I can --

Q Was it Riggi?

A Yeah, I think that was it.

Q And were there other Desco employees there?

A Yes.

Q Who were these?

A There was Evangelidis and John Sitiriou was there.

Q And what happened when you got to the office?

A When I got to the office they told me --

JUDGE MILLER: Who is "they"?

THE WITNESS: Mr. Riggi talked to me. On the way down there, by the way, they informed me, they tell me -- it was different, we didn't get in the office just like this.

MR. MULKERN: Okay. What happened on the way down?

MR. SMITAS: I'm going to object to anything Segado said as hearsay.

THE WITNESS: So, anyway, in the office, they asked me --

JUDGE MILLER: Wait a minute. Let's clarify where we are here.

MR. SMITAS: They're walking on the way down to someplace on the job --

MR. MULKERN: I would like to ask Mr. Psarras what Mr. Segado told him.

JUDGE MILLER: Do you have any contention that Mr. Segado is a supervisor?

MR. MULKERN: I would say that, as Mr. Psarras testified, in the absence of this Kenny King, that Mr. Segado is a foreman.

MR. SMITAS: No, it's not in the Complaint.

MR. TOCCI: There's no allegation --

MR. SMITAS: There's no allegation in the Complaint.

MR. MULKERN: It's not alleged in the Complaint.

MR. SWITAS: Then I object to General Counsel's contention at this particular point that this person is an Employer's supervisor.

[illegible] MILLER: Let's just go with what happened in the off[illegible]

THE WITNESS: What happened in the office was, they asked me to give a deposit to join the new Union.

Q (By Mr. Mulkern) Who asked you?

A Mr. Vince Riggi. So, he says, who you are. I said, Constantino Psarras. He find a receipt which it was ready, he had a few receipts there, he find the receipt and he says, oh, that's you. All right. He says, how much are you going to give me? I said, fifty dollars and I handed to him a check, payroll check from the company. He said, I don't have that much to cash it and then he said, let me see, he check and he says, no, no, I'm not supposed to cash it anyway. He turns around and asks my boss, Mr. Cordi, who was right there, if he can cash it. He says no. So, Mr. Cordi got some cash with him and he lend me fifty dollars. So, I borrowed fifty dollars from Mr. Cordi and I hand it to Mr. Riggi and I got the receipt which don't have no price on it.

Q Okay. And what, if anything, did Mr. Riggi say when he gave you the receipt?

A He says, as soon as you pay the rest of the money, you're going to be joined that Union and with this permit now you are allowed to work, to work on the job now.

MR. MULKERN: I'd like this marked for identification as GC-6.

(Whereupon, General Counsel's Exhibit Number 6 was marked for the purpose of identification.)

Q (By Mr. Mulkern) Now, I show you what's been marked for identification as GC-6 and ask you if this is the receipt which Mr. Riggi gave you on that day.

A Yeah.

Q Did he make out that receipt in front of you?

A No. It was ready, right there.

Q It was already made out when you got there?

A There were five, six of them there and he check and he find mine, he says, who you are, that's you, Constantino Psarras and I say, yeah.

Q So, it was already filled out when you got there?

A Yeah.

MR. TOCCI: I object to the leading questions.

MR. MULKERN: I'm just clarifying exactly what he testified to.

JUDGE MILLER: Overruled.

Q (By Mr. Mulkern) Now, did you see Sitiriou give Riggi anything?

A Yes. He give him fifty dollars. He borrowed it from

Mr. Cordi.

Q Okay. And how about Evangelidis?

A He give the money too, yeah.

Q Okay. And did they both get receipts?

A They got receipts.

Q Okay. Now, directing your attention to the following Thursday, that would be on or about February 6th, 1975, did you have another conversation with Segado?

A Yeah.

Q And, as a result of that conversation, what did you do?

MR. SMITAS: I'm going to object.

THE WITNESS: He took again to the office.

MR. SMITAS: Wait a minute. I object to anything between two individuals that are not connected with the Respondent.

JUDGE MILLER: General Counsel has carefully followed the line from the objection the last time. He has not asked what was said between these two witnesses. He has solely asked, did you have a conversation, a permissible question, and what did you do as a result of that conversation, another permissible question.

MR. SMITAS: He's not asking that now.

JUDGE MILLER: That's exactly what he asked.

MR. SMITAS: I'll withdraw the objection if that's as far as it's going to go.

JUDGE MILLER: Now you may answer the question. What did you do as a result of this conversation?

THE WITNESS: Finally, I end up in the office again. Okay?

Q (By Mr. Mulhern) Now, what time was this that you ended up in the office again?

A Lunch time it was.

Q Okay. And who was there this time?

A Same crowd and at that time they was making application for one of the guys there, one of these new Union forms.

Q Okay. But who was there?

A Mr. Cordi, Kenny King, Riggi, Vince Riggi and it was me, it was Evangelidis, John Sitiriou. There was quite a few more people there, I think.

Q Okay. And what did Riggi say to you?

A He asked me if I got the rest of the money.

Q Okay. And what did you say to him?

A I say no.

Q And did you tell him anything else, when you might have the money?

A I'm going to let him know, like two or three weeks from that day. Three weeks from that day.

Q Okay. And, did Mr. Riggi say anything else about this money?

A He was talking to so many people about this money, I don't recall nothing. I don't remember now.

Q Okay. Now, directing your attention now to approximately two Mondays later, that would be on or about February 17th, 1975, did you go to the Local 16 hall?

A Yeah.

Q Was anyone with you when you went there?

A Yes. Four people, me, Giansis, Evangelidis and John Sitiriou.

Q And what happened when you drove up outside?

A We park outside and Evangelidis and Sitiriou went up there.

Q Okay. And then they came down a few minutes later?

A That's right.

Q Okay. Fine. Now, directing your attention to on or about Thursday February 27th, 1975, did you have a conversation with Joe Cordi that day?

MR. SMITAS: What day was that?

MR. MULKERN: February 27th.

THE WITNESS: Yes. That day was Thursday?

Q (By Mr. Mulkern) Yes. And where did this conversation take place?

A We were working the job and Mr. Cordi came up there to give us the payroll check.

Q Okay. And, was anyone else working near you at that time?

A Oh, yeah. A lot of people.

Q Okay. And what was the conversation? What did Cordi say to you and what did you say to him?

A Exactly what he tell me?

Q As best you can recall.

A The best I can recall?

Q Yes.

A Well, the best I can recall, I was down on my knees in a corner. I was grinding something. So, Mr. Cordi say, give me a big smile. I turned around,I look at him, he hand me the payroll check and he says, here in the envelope. I got up and I took my check and he said, what did you do with Vince, did you pay him? I say, I don't have the money. At that time, right there on the spot, I was talking to him, Evangelidis passing by with one of these carriers we have when we carry the material and he stops -- Cordi stops Evangelidis to give to him the check. So he says to me, so what are you going to do? I say, well, we went down there and they refused to get the money from the guys. I don't know what happened to him. So he turns around and asks Evangelidis if he paid Vince. He said no because he refused the money because we got some kind of troubles with 59. He said no, he refused the money because you give it to him only twenty dollars. You better pay the rest of the money, both of you if you want to keep the job. Otherwise, you aren't going to have a job if you don't join the Union. That's all there was and then we started working again.

Q Okay. Now, after you paid the money to Riggi, did your pay rate change?

A Excuse me?

Q After you paid Riggi, paid the money to Riggi, did your pay rate change?

A No.

Q Okay. Now, before you paid the money to Riggi, did you have any savings deducted from your check?

A Yes.

Q And what plan was this deducted into?

A It was twelve dollars each forty hours.

Q Okay. And where did this money go?

A It was going to the bank.

Q What bank is that?

A Manufacturers Hanover? Yeah. Which is my Union deposit.

Q What Union was that?

A For the Local 59. I had an agreement, I don't know.

Q Was there any change after you joined -- after you paid the money to Riggi?

A Oh, yeah.

Q What happened then?

A They started giving me, in the check, they started giving me stamps.

Q And what were those stamps for?

A For the mechanics pension, for the masons pension, I don't know.

Q Okay. Now, did your job duties change after you joined -- after you paid this money to Riggi?

A No.

Q What type of work did you do after you paid the money to Mr. Riggi?

A The same job I was doing before.

Q What was that?

A Generally fixing material for the mechanics.

Q Did you do any installation?

A No.

Q Now, directing your attention to on or about March 16th, 1975, what happened on that day to you?

A That day I had a car accident.

Q Okay. And, did you go back to work at Desco?

A No, since then I've never gone back to work because I was unable to go back.

MR. MULKERN: Okay. I have no further questions.

JUDGE MILLER: All right. Let's go off the record.

(Discussion had off the record.)

JUDGE MILLER: Back on the record.

CROSS EXAMINATION

Q (By Mr. Tocci) Mr. Psarras, you said you paid fifty dollars to Mr. Riggi on January 31st of '75; is that correct?

saw him and I turned around and he said, give me a smile. I said, what for? And he handed me the paycheck. So, that's it.

Q (By Mr. Smitas) What else?

A What else he told me?

Q Yes.

A He says to me, what I did with Mr. Vince, did I give the rest of the money to Mr. Vince.

Q No. No. You tell me what he said in his exact words.

A He asked me.

Q What did he say?

A Did you pay the rest of the money to Mr. Vince.

Q To Mr. Vince?

A To Vince, yeah. To Vince, not Mr. Vince, exactly.

Q Well, I want to know his exact words if you can remember.

A Well, what he told me was if I pay the rest of the money to Mr. Vince, okay?

Q That was his exact words?

A Yeah.

Q Go ahead. What else did he say? His exact words.

A I say what he said.

Q Mr. Vince. Go ahead. Anything else?

A To Vince. I remember to Vince. I don't remember the Mr. Vince.

Q Well, I'm asking you to tell us —

A Vince.

Q This is very important.

A Yeah. It is very important. Mr. or just Vince, right?

Q No. I want you to testify, tell us.

A Yeah. He told me. He make me understood, in other words, if I give money to Vince.

Q I'm not asking that question.

A What?

Q I'm asking another question. I'm asking you to tell us what, if you can remember, Mr. Cordi saying to you in his exact words, when he handed you the paycheck February 27th, 1975.

A Mr. Cordi says to me, give me a big smile. I say, for what and I look at him and he pointed the check above me. I stand up, I took the check and he says to me, what you did with Vince.

Q He said what?

A What you did with Vince.

Q What you did with Vince?

A Let me finish and if I don't say it right, maybe you can -- he said, did you give the rest of the money to Vince for the Union. And I say no because I don't see him. He says, he supposed to be on the job one of these days. In the meantime, Evangelidis is passing by and he stops Evangelidis. He gives to him his check and he keep talking to Evangelidis and he said to Evangelidis, what you did with Vince, did you pay the rest of the money and Evangelidis turned around and said, I went up there and he don't accept the money, because he got some troubles with 59, with the Local 59. He says, no that's not the reason he don't accept the money. The reason is because you're only giving to him twenty dollars.

Q Who said this?

A Mr. Cordi.

Q What part did Mr. Cordi say, now?

A Mr. Cordi says, he refused to take the money for a reason because he had problems, Vince, with the 59, the reason was because you're only giving to him twenty dollars. So, he says you better pay the rest of the money if you want to keep the job. Otherwise, if you don't pay the rest of the money and join the Union, you're going to have no more job.

Q Wait a minute. Who said this?

A Cordi.

Q Who was he talking to?

A To Evangelidis.

Q To Evangelidis?

A Yeah. And then he turn around to me.

Q You were --

A I was right there. Me and him almost touched each other.

Q Okay.

A Okay? That's clear?

Q No, it's not clear to me because I wasn't sure who was saying what. You tell me what Mr. Cordi said to Evangelidis now.

A Mr. Cordi says to Evangelidis, what did you do with Vince, did you pay him the rest of the money? He said, I went over there but he refused to get the money, because they got some problems with the Local 59. Cordi said, no, he don't refuse to get the money for that reason. The reason he refused to get the money because you give to him only twenty dollars and you better pay the rest of the money if you want to keep that job.

Q Keep that job?

A Keep that job, yeah. If you wanted that job, to keep it, because otherwise, if you're not a member or if you don't join that Union, you're going to have no more job. The same thing told me too, also for you too, he says, you better pay that man because if you don't pay and if you don't join that Union you ain't going to work any more.

Q Did he say anything else?

A No, that's it.

Q Could he have something else?

A Maybe he says good-bye.

Q I'm talking about something else. Could he have said something else other than what you told us?

A I don't remember except if you can remind me.

Q You don't remember?

72a

A Evangelidis.

Q It begins with an "E"?

A Yes.

Q Sitiriou and yourself.

A That's right. And Glassis, right?

Q And you went to the Union Hall in Schenectady. You drove over to Schenectady?

A We parked right outside.

Q Okay. Who went upstairs?

A Evangelidis and Sitiriou.

Q And they went up to see Mr. Riggi?

A That's what they told me.

Q You waited in the car?

A Yeah.

Q And then when they came back, they told -- did they tell you what Mr. Riggi told them?

A Yeah.

Q And what did they tell you?

A They told me he don't take the money because they have problems with the Local 59.

Q Do you recall testifying on the last hearing here, June 11th?

A I can't remember what exactly I said.

Q Well, you remember you testified.

A Yeah, I testified.

A   I don't understand.

Q   Did you ever say, "I don't want to join the Mason Union"?

A   No, I didn't.

Q   Did you ever say anything to anybody that you didn't want to join the Mason Union as far as Mr. Cordi is concerned or Mr. Riggi is concerned?

MR. MULKERN: Once again, I don't understand what Mr. Soitas is asking this time.

JUDGE MILLER: I think I understand. I'll let him answer if he can.

THE WITNESS: If I said to Cordi if I wanted to or not?

Q   (By Mr. Soitas) No, no. I asked you whether or not you told anybody, Mr. King, Mr. Cordi or Mr. Riggi, that you didn't want to join Local 16?

A   No, because they were going to lay me off if I say that.

Q   Did you tell them that?

A   Tell them what?

Q   Did you tell anybody that you didn't want to join Local 16?

A   No, because I don't want to be laid off, that's all. Simple as this. I was scared, that's all. They told me in the beginning if I want to join the Union because otherwise I'm not going to be able to work as a helper there. That's the reason I joined the Union. I don't have any pleasure in giving more money. That's all. I joined because I want to work, that's all. I need the job. Why should I say to them I don't want to join it. I was stalling time, that's why I don't go down there. I was stalling time all the time. That's it, to see what was going to happen, whether they were going to decide or not. That's the real truth because you, you don't exactly ask things, you just put a word in my mouth the way you want and that's it, right?

JUDGE MILLER: All right. I think this has gone far enough. Have you any more questions?

MR. SMITAS: I'm not sure if he answered my question.

JUDGE MILLER: I think he did.

MR. SMITAS: Did he? I'll make a motion to strike all of that answer as non-responsive.

MR. MULKERN: I don't believe that any of it was unresponsive.

MR. SMITAS: I didn't ask him for a reason. I didn't ask him for any reason why he did or did not do something. I asked him a question --

THE WITNESS: You asked me why I --

JUDGE MILLER: Mr. Pearras, there is no question directed to you.

MR. SMITAS: I asked him a question which said, did you ever do a certain thing and the answer was no and then he went on -- I'm not going to fight with the witness, Mr. Examiner as to questions and ramblings on but I can make a motion that his answer further than what I asked is unresponsive and prejudicial to my client and I make a motion that it be stricken.

JUDGE MILLER: I'll deny your motion.

MR. TOCCI: I have to ask for some clarification after this last statement.

JUDGE MILLER: All right.

Q (By Mr. Tocci) Mr. Psarras, you sat there and said somebody told you that you were going to get laid off or lose your job if you didn't join Local 6 or 16, which one are you talking about?

A I know Vince. I don't have anything to do with that.

Q Somebody told you that you were going to get laid off if you didn't join a certain Union.

A I'm not going to be able to work any more on that job.

Q Wait a minute. That's what somebody told you and that was somebody from the Union or the company?

A Kenny King from the company.

Q Okay. What day did he tell you that?

A Oh, well, that goes back January, right?

Q I don't know.

A I don't have my notebook with me. I can't remember. He approached me and he says to me, "If you don't join that Union, you're not going to be able to stay on the job". So, I say, "I want the job and I'm going to join the new Union".

75a

a difference, then what else can I say.

Q (By Mr. Smitas) Okay. There could be a difference between the exact words and what you said today.

A Could be differences in one point only, like the way I put it and the way they put it but the way I understood, they tried to make me understood, it was correct.

Q That's what you had in mind.

A What?

Q What you testified to today.

A Oh, yeah. I say what I remember they told me, what exactly, no word by word but what they tried to make me understood by talking to me that time, whatever we was talking about.

MR. SMITAS: No more.

JUDGE MILLER: Thank you, Mr. Psarras, you are excused. We'll break until 3:00 o'clock for lunch.

(Witness excused.)

(Whereupon, at 2:00 o'clock p.m., a luncheon recess was taken.)

AFTERNOON SESSION

JUDGE MILLER: Let's go back on the record. Call a witness.

MR. MULKERN: General Counsel calls Dimitrios Evangelidis.

DIMITRIOS EVANGELIDIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE MILLER: Tell us your name and spell your full name, please.

THE WITNESS: My name is Dimitrios Evangelidis, D-I-M-I-T-R-I-O-S. The last name is E-V-A-N-G-E-L-I-D-I-S.

JUDGE MILLER: Proceed.

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Evangelidis, was there a time when you were employed by Desco Vitro-Glaze of Schenectady, Inc.?

A Yes.

Q And when did you start working there?

A Sometime the end of January, 1975.

Q And when you were working for Desco Vitro-Glaze, where did you work, on what project?

A On the building we called Health Spa, something like this.

Q And where was that located?

A In the South Mall.

Q Now, how did you first here of that job as Desco?

A Chris Glansis and Tino Psarras where they were employed at Desco Vitro-Glaze, they told me they had open job for me.

Q And so, did there come a time when you visited the job site then?

A Yes. They took me to the job.

Q And who did they introduce you to at the job site?

A To the Superintendent of the job, Kenny King.

Q Okay. And what did Mr. King say to you and what did you say to Mr. King?

A He told me what to do and he showed me then the foreman of the job, John Segado and he said to me, he going to tell you what to do.

Q Okay. And did Mr. King tell you what type of work you'd be doing?

A Yes. He told me I'm going to care the handcar and I'm going to carry bank stones and cement powder from the dock to upstairs where they would be working.

Q Okay. Then, what type of work did you do then in the ensuing weeks after you started working?

A Same work, same job.

Q And what was that?

A Pick up stones and powdered cement.

Q Now, how long did you work for Desco Vitro-Glaze of

78

Schenectady?

A About two months.

Q And during that two-month period, did you do any other things besides picking up these stones and powdered cement?

A Yes. Sometimes John Segado told me to put burlap to the corners of the rooms.

Q Now, is that burlap?

A Burlap, yes, whatever you call it.

Q And, how would you do that?

A How?

Q Yes.

A He showed me how to do that and I did.

Q Okay. But what would you do; how do you put burlap down?

A How?

Q Yes.

A He just showed me and I did.

Q Now, who did you assist when you were working at Desco Vitro-Glaze; was there another class of workers who you helped out?

A I used to do helper work, that's all.

Q And who did the helpers assist?

A You mean what kind of things I used to do?

Q No. Besides the helpers, what other types of workers were there working?

A Oh. Mechanics.

Q Okay. And what type of work did mechanics do?

A Mechanics' work, installation job.

Q And did you do any installation work yourself?

A Never.

Q Now, have you ever heard of a Union called Local 59?

A Yes.

Q And when did you first hear about it?

A The first day when I started working in there. Tino Psarras told me about Local 59.

Q Okay. And did there come a time when you were told that you might want to put some money down?

A Yes.

Q And when did this occur?

A He told me, we're going to take you to the Local 59 to join the Local 59, to put some money down and I said, yes.

Q Who told you this?

A Tino Psarras.

Q Now, directing your attention to within two weeks after you started working, did there come a time when Joseph Cordi came to the job site with Local 16 Business Agent, Vincent Riggi?

A Yes.

Q And what happened when these two men came to the job site; which particular job site was this, the same job site you started working at?

A Yes. Same floor.

Q Okay. And what happened?

A John Segado, the foreman of the job, he came to me and he told me, "follow me" and to another couple guys, Psarras and John Sitirion.

Q And then what happened?

A He took us to the job site office and there I saw Mr. Riggi, Local 16, Masons Local and Mr. Cordi.

Q Were they waiting in the office when you got there?

A They wasn't there yet.

Q Okay. And what did Mr. Cordi and Mr. Riggi say to you and to the other employees and what did you and the other employees say to them?

A That I had to join the Local 16.

Q Who said that you had to join Local 16?

A Mr. Riggi, I guess --

MR. TOCCI: I move to strike this as not responsive. He says "I guess".

JUDGE MILLER: Let's try to nail it down to what he recalls being told to him.

Q (By Mr. Mulkern) Who do you recall told you that you had to get into Local 16?

A They told me to put some money down for deposit.

Q Well, who --

A Mr. Riggi and Mr. Cordi.

Q Okay. What did you say?

A I say "yes". I put a hundred dollars from my pocket it and I put it down for a deposit.

Q And who did you give it to?

A To Mr. Riggi.

Q And what did Mr. Riggi do?

A He gave me a small paper, receipt, something like this.

Q Now, how about Mr. Psarras and Mr. Sitiriou?

A They didn't have any money with them, and Mr. Cordi gave fifty dollars to each one of the persons and they put it down for a deposit.

Q Now, after you paid Riggi the hundred dollars, did you begin to receive anything different along with your paycheck?

A Yes. Stamps.

Q And what kind of stamps were these?

A For pension fund and health program.

Q Had you received these stamps before you met with Riggi and gave him the hundred dollars?

A No.

Q Now, directing your attention to about a week later, did you meet Mr. Riggi again?

A Yes.

Q And where was this now?

A Same place, same floor where we had been working at the job.

82

Q And was this at the job site office?

A Job site office.

Q And who else was there?

MR. TOCCI: Excuse me. What was the date?

MR. MULKERN: About a week later.

MR. TOCCI: A week later?

MR. MULKERN: Yes.

THE WITNESS: Mr. Cordi, I think.

MR. MULKERN: You think Mr. Cordi was there? Were any other employees there?

MR. SMITAS: I'm going to object to what he thinks.

MR. MULKERN: Well, I think what, in effect, he's saying is that --

JUDGE MILLER: No. I don't want you putting words in his mouth. I'll overrule the objection. I can understand what he means. You can cross examine on it.

Q (By Mr. Mulkern) Were there other employees there?

A Yes.

Q And who were they?

A Tino Psarras and John Sitiriou, a few others, I don't remember who.

Q Okay. And what did Mr. Riggi and Mr. Cordi say to you and the other employees there and what did you and the other employees then say to them?

MR. TOCCI: I'd like to go on the record as objecting to

83

anything that Mr. Riggi says as being binding upon Local 6.

JUDGE MILLER: Riggi being an officer of 16.

MR. TOCCI: Of 16, and Business Agent. And, I would like to have a continuing objection as to that even as to prior conversations also.

JUDGE MILLER: An Agent can only bind his principal so I'm not sure that that's an objection.

MR. TOCCI: Well, just a reference.

JUDGE MILLER: If you want it on the record, it is clear. There's no claim that Riggi was representing Local 6 anyway.

MR. MULKERN: No.

MR. TOCCI: Or vice versa, that anyone from Local 6 was representing Local 16.

MR. MULKERN: No.

MR. TOCCI: Just so it's clear on the record.

Q (By Mr. Mulkern) So, do you recall what was said there?

A Pardon me?

Q Do you recall what was said there?

A At the job site office?

Q Yes. What did Mr. Riggi and Mr. Cordi say and what did you fellows say?

A To pay the rest money of the Local.

Q Who said that?

A Mr. Riggi. And I said, "I'm going to pay a little by a little whatever I can and I'm going to stop the following

Monday in the office to give some money."

Q Okay. Now, directing your attention to that Monday, did you go to the Local 16 office?

A Yes.

Q And who drove over there with you?

A Tino Psarras and John Sitiriou.

Q Okay. And, about what time was it?

A 7:00 o'clock in the morning.

Q Okay. And what did you do when you got there?

A I went upstairs to the office with John Sitiriou and I pulled from my pocket twenty dollars to give to Mr. Riggi. John Sitiriou did the same and then Mr. Riggi said, "What is this, twenty dollars? This is nothing. Plus, this, I can't take this money because we've got a big question coming up this week so I can't take this money." So, I took my money and I put it in my pocket and I left.

Q Okay. Now, what day of the week was payday at Desco?

A Thursday.

Q Thursdays. Now, directing your attention to around the second Thursday after you went to the Local 16 hall, did you have a conversation with Joe Cordi that day?

A Yes.

Q And where did this conversation take place?

A At the same place we been working.

Q Okay. And was anyone else there for this conversation?

A Yes. To the next room was Tino Psarras.

Q Okay. And did Cordi have anything with him this day?

A The paychecks.

Q Okay. And before actually speaking to you, who did Mr. Cordi begin speaking to?

A To Tino Psarras.

Q And what did he say to Mr. Psarras?

A To pay the rest money of the Local 16 because otherwise he's going to be out of a job.

Q And did he then turn to you and start speaking to you?

A Yes.

Q And what did he say to you?

A That you have to pay the rest money of the Local because otherwise you're going to be out of a job. And I said, "I have expenses and I'm going to pay a little by a little, whatever I can". He said to me, "Well, if you're not going to pay, you're going to be out of a job and then you're going to have more expenses". So, I said, "I'm going to try to pay".

Q Now, did there come a time when you actually applied for membership in Local 59?

A Yes.

(Whereupon, General Counsel's Exhibit Number 7 was marked for the purpose of identification.)

Q (By Mr. Mulkern) Now, Mr. Evangelidis, I show you what has been marked for identification as General Counsel's

Exhibit Number 7 and ask you if that's the application which you filled out for Local 59.

A Yes. This is my application.

MR. MULKERN: I would ask that this be received into evidence.

MR. TOCCI: I would object to it as being after -- occurring after the alleged violations that I've heard testified to here today.

JUDGE MILLER: May I see it?

MR. TOCCI: It's dated February 24th, 1975.

JUDGE MILLER: What about that, Mr. Mulkern? What's the relevance of a subsequent application to the issues before us?

MR. MULKERN: Well, I think it shows that notwithstanding the course of influence of Mr. Cordi and Mr. Riggi, the importation to join Local 6 and 16, he still desired to join Local 59. I believe also, the date on that application is prior, for instance, to Mr. Cordi's February 27th conversation in which he told him that if he didn't pay off the rest of the Local 16 initiation fee, he would be terminated. To that extent, I think it's perfectly relevant. You know, it speaks for itself, obviously.

JUDGE MILLER: All right. I'll receive it.

(Whereupon, the aforementioned document, heretofore marked as General Counsel's Exhibit Number 7, was received into evidence.)

MR. TOCCI: What number was that?

JUDGE MILLER: GC-7.

MR. SMITAS: I object to it also, for the record.

JUDGE MILLER: Overruled.

Q (By Mr. Mulkern) Now, directing your attention to on or about March 31st, 1975, did you stop working for Desco?

A Yes.

Q And what happened to cause you to stop working?

A We had been on strike.

Q Okay. And, directing your attention to about a week after -- was there picketing associated with the strike?

A Yes.

Q Now, directing your attention to about a week after the picketing started, did you have a conversation with Kenny King?

A Yes.

Q And how did this conversation come about?

A I called him and I asked him if I can come back to work. And, what's going on with those cases, with strikes and Courts and stuff like that and he said to me, "If you want to come back to work, you can and if the Local 59 wins, you already joined the Local 59. They can't refuse you. They've got to take you in." Something like this. "If the Local 16 win the case, you're already in. So, if you're going to come back to work, you can come back." And I did.

Q Okay. So you went back to work and then what happened?

A I started working. I worked for four days and then I stopped because I had hard time from my members. They told me, you're not supposed to work and I stopped working. I went back on strike.

Q Okay. And what did you say to the company representatives when you left to go back on strike?

A Nothing.

MR. SHITAS: I'm sorry, I didn't hear that question.

MR. MULKERN: I said, what did he say -- what, if anything, did he say to the company representatives when he left to go back on strike.

MR. SHITAS: And he said nothing.

MR. MULKERN: And, did there come a time when, through Mr. Lavenberg, you made an unconditional offer to return to work?

THE WITNESS: Yes.

MR. SHITAS: I'll object to this. There is no allegation of any 8(a)3 in the Complaint, there's no allegation that there were any unfair labor practice strikers and it's just not germaine to any issue in this case.

MR. MULKERN: [illegible] argued at the first hearing in this proceeding that an unfair labor practice strike was taking place at the time. Now, the events concerning which we're making a Complaint here, in alleging that Mr. Evangelidis is

MR. MULKERN: Since you made your unconditional offer to return --

MR. SMITAS: I'll object.

JUDGE MILLER: You just did it again. Have you ever returned to work, Mr. Evangelidis?

THE WITNESS: Never.

JUDGE MILLER: Is that what you were getting at?

MR. MULKERN: Yes. Have you ever returned to work with Desco Vitro-Glaze?

THE WITNESS: To work for Desco Vitro-Glaze?

MR. MULKERN: Yes.

THE WITNESS: Nobody called me to go back to work.

MR. MULKERN: That's all.

JUDGE MILLER: Okay. You may cross examine. Let me ask Respondents' Counsels, one at a time, rather than bouncing back and forth as we did with the last witness, if one of you would put your cross examination on and then the other. I know that's how we intended to do it the last time but we didn't quite work it that way. I think it will be easier for all of us.

CROSS EXAMINATION

Q (By Mr. Tocci) Mr. Evangelidis, did you ever become a member of Local 59?

A Yes.

Q When?

A Sometime the end of February, I think, 24th, something like that.

Q Do you have a book?

A No book. Application.

Q Oh, just an application.

A Yes.

Q Were you ever given a membership card?

A I didn't receive my book.

MR. TOCCI: At this time, I'd like to ask for a stipulation. I'm referring to previous testimony given by this witness. It's on page 236 of the prior hearing where Mr Sheridan, at the last hearing -- he was the Counsel for the General Counsel at that time -- at the bottom of the page, I believe we could call it a stipulation, Mr. Sheridan, on line 18, stipulated that "he was not initiated in the Union", then I requested a stipulation that he was never a member of 59 and Mr. Sheridan said, "no" and then at the bottom he says, "Well, as he testified, he made application but he's not a member. That's true." Does that stipulation still hold?

MR. MULKERN: I will accept that stipulation.

JUDGE MILLER: Very well. I will receive that as a stipulation.

MR. TOCCI: Is that stipulated as of today's date also? Do you want to check the list on that? It goes to remedy.

MR. MULKERN: I'll stipulate to that.

A Yes.

Q And that was when, in early February?

A Maybe the first days of March. I don't remember exactly the day.

Q Well, you testified that --

A It was Monday, I remember that.

Q I wasn't clear as to what month you said. I thought it was February. But, in any event, you went over to the Union Hall.

A Yes.

Q Mr. Tsarras drove you over?

A Yes.

Q And you say you went there to give Mr. Riggi some money.

A Yes.

Q Now, Mr. Riggi wouldn't take it; is that correct?

A No.

Q What did he say to you; why wouldn't he take it?

A He told me, "What is this, twenty dollars?" I said, "That's all I have right now." And plus this, he told me that "I can't take this money because we got a big question coming up this week so I can't take any money."

Q Did he explain what question he was talking about?

A No, he didn't explain it.

Q Didn't he say a question about whether he could have you as a member?

91

made you go down there, did someone call you and tell you to come on down and get your money?

A Nobody called me. I just was broke because I was out of job and I was to get my money back. I haven't anything to eat. I was hungry and I went and I asked for my money.

Q Wasn't there someone that told you to come down and get your money?

A No.

Q Or that you could get your money there if you went?

A I went back myself and I ask if I could get my money back.

Q You asked whom?

A Mr. Riggi.

Q And he said you could?

A He said, "Okay, I'll give you your money."

Q Now, you testified something about a strike.

A Yes.

Q You worked until March 31st, 1973.

A Yes.

Q Then you said you went on strike.

A Yes.

Q What do you mean; can you explain that, you went on strike?

A We just went on strike.

Q Who went, you?

A Our Local. All the members of Local 59.

Q Who stopped working on March 31st, 1975? You said you stopped working, right?

A Yes. We were on a strike.

Q Who else stopped working?

A All the members of Local 59.

Q Can you name them?

A Ali Muhammed. I can't remember the rest names. I know John Sitiric was on compensation at that time. Tino Psarras was on disability at that time but they did strike. They came down and they striked. I don't remember the names of the rest members.

Q Well, for people who were working for Desco, was it just you and Ali Muhammed that stopped working on March 31st?

A All the members of Local 59, they had been working for Desco Vitro-Glaze. They went on strike, myself too.

Q The only men you can remember by name are yourself and Ali Muhammed?

A Yes.

MR. TOCCI: I have no further questions.

JUDGE MILLER: Mr. Smitas?

Q (By Mr. Smitas) Now, when did you start employment with the Company?

A When I started working for the Company?

Q Yes.

A Sometime the end of January, 1975.

have I spoken to King of Cordi." Is that right?

A Correct.

Q Now, on the day of the strike, do you remember how many helpers were working for Desco?

A I never count but I guess over ten.

Q Could there be seven?

A Seven?

Q Yes.

A I don't remember. I can't tell.

Q All right. It says here -- let's read this together again, okay? It says, "At the time I was hired, there were seven helpers working for Desco. John Segado, Dominick Menata, Dominick Cupola, Ali Muhammed, John Sitiriou --

A Constantine Psarras --

Q -- Psarras and J.C. Hamilton". Right?

A Yes.

Q "Between the time that I was hired and the time I went out on strike, there were no additional helpers hired by Desco." Is that right?

A Yes.

Q There were seven people, is that correct, that were working as helpers; is that right?

A Yes.

Q Okay. And on the day that you went out on strike, did John Segado go out on strike?

A No.

Q Did Dominick Menata go out on strike?

A I don't remember this person with this name. I can't remember the person.

Q Did Dominick Cupola go out on strike?

A The old guy. I didn't see him nowhere either inside or outside of the strike.

Q You don't know then.

A I don't know.

Q Okay. How about John Sitiriou?

A He was on compensation at that time. He wasn't working.

Q So, he didn't go out on strike.

A He came down, yes. He picket. He came down to the strike but he wasn't working at that time because he was on compensation but he came down to the Hall.

Q Constantine Psarras?

A The same thing. He did the same thing. He was on disability at that time, I remember. He came and he picket.

Q But he wasn't working for Desco at that time, right?

A No, because he was on disability.

Q That's the same with John Sitiriou, right?

A Yes.

Q He was on disability prior to the strike.

A Yes. He was on compensation, right.

Q How about J.C. Hamilton?

95

BEFORE THE NATIONAL LABOR RELATIONS BOARD

- -

In the Matter of:

DESCO VITRO GLAZE OF SCHENECTADY, INC.

Respondent

-and-

LOCAL 59 INTERNATIONAL ASSOCIATION OF MARBLE SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS, HELPERS, MARBLE, MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO AND LOCAL 16. BRICKLAYERS, MASONS PLASTERERS, MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO, et al.

Charging Party

- -

Case No.

3-CA-5993

3-CB-2493 - 1. 2

Hearing Room
National Labor Relations Board
Leo W. O'Brien Federal Bldg.
Clinton Avenue and North
Pearl Street
Albany, New York 12207
Wednesday, August 4, 1976

The above-entitled matter came on for further hearing pursuant to adjournment at 9:00 a.m.

BEFORE:

Honorable Michael O. Miller. Administrative Law Judge

APPEARANCES:

PAUL V. MULKERN, JR., ESQ. National Labor Relations Board
Leo W. O'Brien Federal Bldg.
Clinton Avenue and North
Pearl Street
Albany. New York 12207

96

APPEARANCES (Continued)

DOMINICK TOCCI, ESQ.
112 State Street
Albany, New York 12207

DANIEL J. SMITAS, ESQ.
56 Fuller Road
Albany, New York

INDEX

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
Joseph Cordi	179	—	—	—
David Lavenberg	211	264	—	—
John Sitiriou	327	343	353	—
Frank Glogowski	357	360	—	—

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's:		
GC-8	190	190
GC-9	193	193
GC-10	199	—
GC-11	203	214
GC-13	225	226
GC-14	240	240
GC-4 and 5	—	241
GC-15	242	242
GC-16	247	248
GC-17	257	258

JUDGE MILLER: On the record.

MR. MULKERN: General Counsel will now call Joseph Cordi.

JOSEPH CORDI

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Cordi, are you associated with Desco Vitro Glaze of Schenectady, Inc.?

A Yes, I am.

Q And what is your position with that organization?

A I'm President of the Corporation.

Q And for how long have you been President of Desco Vitro Glaze?

A Since January of 1973.

Q And, as such, what are your duties and responsibilities as President of Desco Vitro Glaze?

A Administrator, General Manager.

MR. MULKERN: I would ask that I be permitted to question Mr. Cordi under the Rule 43(b) of the Federal Rules of Civil Procedure and Rule 611(c) of the Federal Rules of Evidence.

JUDGE MILLER: I believe that's appropriate.

MR. SMITAS: He hasn't shown to be hostile.

99

JUDGE MILLER: He doesn't need to. He's shown a connection to the Respondent.

THE WITNESS: Could I ask what that is?

JUDGE MILLER: You can cross examine.

THE WITNESS: Could I ask what Rule 43 is?

JUDGE MILLER: It's a rule of the -- well, the Rule we now use is 611(c) of the new rules of evidence that provides that where a witness is connected with the party being charged, your Company in this case, the person can be questioned as if on cross examination, as with leading questions.

THE WITNESS: I see, thank you.

Q (By Mr. Mulkern) Now, Mr. Cordi, when you took over Desco Vitro Glaze, you were aware at that time that Local 59 was the collective bargaining representative for the tile, marble and terrazzo workers helpers. Is that correct?

A Well, there's a lot of circumstances that prevailed when I took over.

Q Well, would you answer the question, please?

A I don't know if I can answer it in its proper perspective.

Q Were you aware or were you not aware that Local 59 was the collective bargaining representative for the tile, marble and terrazzo workers helpers employed by Desco Vitro Glaze?

MR. SMITAS: Well, I'm going to object. The witness

100

is obviously confused by the word 'aware' and the term, 'collective bargaining representative' which, I think, is a legal term as we know it in the Labor Relations Managements Act. I mean he could put it a lot simpler to a layman as to whether or not these people belonged to that Union. He can ask him whether or not he recognized that Union as the collective bargaining agent. Did he have a signed agreement.

JUDGE MILLER: I'm going to overrule your objection. I'm going to let General Counsel ask his questions his way. If the witness doesn't understand the question, he can say so. I don't think the question was beyond the witness's comprehension.

MR. SMITAS: Well, excuse me, sir. I want to point out, you know, at this particular point that I'll object when I feel that a legal conclusion is being put to my client that he may not be aware of --

JUDGE MILLER: You may make any objection you want.

MR. SMITAS: All right. I just --

JUDGE MILLER: And you don't have to stand to make your objections. I know you're having some trouble with your leg, so --

Q (By Mr. Mulern) I'll ask the question again. Now, Mr. Cordi, when you took over Desco Vitro Glaze, you were aware at that time that Local 59 was the collective bargain-

101

ing representative for the tile, marble and terrazzo workers helpers employed by Desco Vitro Glaze at that time. Is that correct?

A At that time, I was not that familiar with Local 59 and their activities.

Q Mr. Cordi, I would ask that you look at page 105, the bottom of page 105, the top of page 106, transcript of prior hearing in this case, and ask you to read that.

A Do you want me to read aloud, or --

Q I would like you to read your answer aloud.

A I answered to the same question, after Mr. Smitas' objection, that I was aware of it.

Q So that you answered last year that you were aware of it?

A I'm clarifying it to the extent this time that I was not that familiar with the activities of Local 59 when I first took over. When I first took over, there was considerable turmoil, there was considerable confusion with the Company, there was considerable problems with the Company. Therefore, we had a lot of problems to overcome.

Q But those problems I would gather have arisen in the past 16 months or so, because you were aware of it last year, but now you're not aware of it.

MR. SMITAS: Oh, I'm going to object to this. This is not cross examination.

102

JUDGE MILLER: No, that's argumentative. I'll sustain that objection.

Q (By Mr. Mulkern) Now, Mr. Cordi, prior to taking over Desco Vitro Glaze in January 1973, had you been associated with that Company for any period of time?

A Yes, I had.

Q And in what connection were you associated with the Company?

A Well, let me put it this way. When Joe LaFore and Ray Petrucco first split up back in the late 60's, I was approached by Joe LaPore to come in to the organization as a partner. I didn't do so at the time because I was part of another organization that was very successful. After Joe LaFore had run the Company and Ray Petrucco had withdrawn from the Company, it was bought out by Joe LaFore, Joe LaFore again approached me in late '71 and early '72 to come in as a partner of the Corporation and that he was, at that time, approximately 63 years old, had nobody to turn the business over to. He explained that his sons weren't capable of taking over the business, and that he wanted to retire at age 65, and that I could buy the entire business. So, therefore, in '72, early '72, I believe it was February of '72, I came into the business with the assumption that, or with the understanding that I would be a partner of the Corporation and eventually take over the business. After spending three months in the business, I found out that the business had been totally run into the ground under the previous administration -- or under Joe LaFore's administration that it was heading for a financial disaster, and that it was --

MR. MULKERN: Excuse me. I don't mind listening to this, but, you know, he really is being unresponsive to the question. I asked him what his position was, and I thought we would probably get an answer there somewhere, but it appears that he could go on like this for fifteen minutes.

JUDGE MILLER: I think the answer is unresponsive. Confine yourself more to the question of what you were doing there.

Q (By Mr. Mulkern) In the year prior to the time that you took over ownership of Desco Vitro Glaze, what position did you hold?

A Well, I think what I was trying to do was be responsive to the extent of giving you the background of what I was doing there, which I think is important to rationalize --

Q No, Mr. Cordi, I didn't ask you for the background. Just tell us what you were doing there.

JUDGE MILLER: If your Counsel wants to bring out the background, he'll ask you the question when it's his turn. But that isn't the question that was put to you, and it's more orderly if we'll just get answers to the questions that

104

are put, rather than volunteering information.

THE WITNESS: Well, the main thing that I was doing there during 1972 was negotiating to take over the business.

Q (By Mr. Mulkern) Were you paid by Desco Vitro Glaze?

A Yes, I was.

Q And what job tasks did you perform?

A Mostly to introduce the painting operation into the Company.

Q Now, during the time that you were President of Desco Vitro Glaze up until January of 1975, isn't it a fact that you abided by the contract between Local 59 and the Capital District Tile, Marble and Terrazzo and Slate Contractors Association in dealing and paying the helpers who were employed by Desco Vitro Glaze?

A I don't really know if we abided by it. In paying employees various wage rates, perhaps we did.

Q Isn't it a fact that you paid your helpers the wage rate specified in the contract between Local 59 and the Capital District Tile, Marble and Terrazzo and Slate Contractors Association.

MR. TOCCI: Excuse me. I object. Mr. Examiner, there is no contract that we're referring to. I would object to any reference to a phantom contract.

MR. SMITAS: Secondly, I would like to pose an objection on the same question, that they're making -- Mr. Mulkern

105

from the original question. I understood it to be from '73 on.

MR. TOCCI: All right, if that's the understanding.

MR. MULKERN: It's from '73 until January or February of 1975 when the coercive conduct occurred.

MR. TOCCI: I'll object and move that stricken.

JUDGE MILLER: I'll sustain that objection. You've got alleged coercive conduct. At this point, that's all you've got.

Q (By Mr. Mulkern) Now Mr. Cordi, in that time frame, between the time that you took over Desco Vitro Glaze in 1973 up until January or February of 1975 -- up until January of 1975, to be precise, isn't it a fact that you paid your helpers the wage rate specified in the contract between Local 59 and the Capital District Tile, Marble and Terrazzo and Slate Contractors Association?

A It's the same question, put the same way. We paid our employees prevailing wage rates.

Q Did you utilize the wage rate scale found in that contract?

A We paid our employees prevailing wage rates.

Q You did not answer my question, Mr. Cordi. I asked you did you utilize the wage rate schedule found in the contract between Local 59 and the Capital District Tile, Marble, Terrazzo and Slate Contractors Association?

106

A If the prevailing wage rate concurred with that, which was indicated by you, then we did.

Q . Mr. Cordi, I direct your attention to page 106 of the transcript of last year's hearing. I ask you to read lines seven through nineteen.

MR. SMITAS: Your Honor, I think that he's taking only part of the conversation. We had the same objection. Mr. Cordi objected the same way, and this whole line of questioning regarding prevailing wages vs. contract rate went on for a number of pages after that.

JUDGE MILLER: I will take note of the entire examination in terms of the context of any answer he's going to give here. You may ask your question.

Q (By Mr. Mulkern) Then, isn't it a fact, Mr. Cordi, that last year when you were asked this same question, you testified, "we utilized their wage rate schedule."

A In many cases, the prevailing wage rate is the same as what's in Union contracts. We go through all parts of the State, and although we don't have contracts with various Unions, we still pay the prevailing wage rates, which is normally the same thing that's in a contract of a local Union. We have a shopman that works in our shop that is not part of any Union whatsoever, but we do utilize a local agreement wage rate to pay the man. But we have no contractual obligation with that Union. In fact, the man is not even part

107

of a Union.

Q Now, Mr. Cordi, isn't it a fact that for a period of time after you took over Desco Vitro Glaze from, specifically from January of 1973 until January of 1975, you made contributions to the Local 59 savings deposit plan. Is that correct?

A That's correct.

Q You did make such contributions?

A Yes, we did.

MR. MULKERN: Could we go off the record for just a second, please?

JUDGE MILLER: Off the record.

(Discussion off the record.)

JUDGE MILLER: On the record.

MR. MULKERN: In an off the record discussion, the parties have stipulated that what will be marked for identification as GC-8 reflects the monthly savings deposits contributed by Desco to Fidelity Bank account. It says on the top, Monthly Report of Savings Deposits for Tile, Marble and Terrazzo Workers Helpers of the Metropolitan Capital District, and they are being submitted, all of the records between December of '72 and December of '74.

JUDGE MILLER: All right, do we have an agreement on that?

MR. TOCCI: I have no problem with that, no objection.

MR. SMITAS: No objection

JUDGE MILLER: All right, they're received.

(The documents above-referred to were marked General Counsel's Exhibit No. 8 for identification and received in evidence.)

Q (By Mr. Mulkern) Now, Mr. Cordi, I show you what has been marked for identification as GC-8, and ask you if these are -- if these records are the records of your Company, first of all.

JUDGE MILLER: I cleared them. They're in evidence.

MR. MULKERN: Okay, fine.

JUDGE MILLER: So, you see, there's no need to go through that then.

MR. MULKERN: No, okay.

Q (By Mr. Mulkern) Mr. Cordi, I'd like you to look at the names of the employees who were found on these records between December '72 and December '74, and ask you what is the employee classification of those people -- the employee classification of them at the time that they were typed on those forms?

A Well, the title of the forms says Monthly Reports and Savings Deposits for Tile, Marble and Terrazzo Workers Helpers.

Q And so these people were helpers?

A The title of the report says --

Q The title of the report says helpers, but were they helpers, is the report accurate, is the title accurate?

A Well, it's a 1972 report. It's before my time.

Q Well, I'd ask you to look at the 1973 reports, and ask you if --

A They could possibly have --

Q Were these people helpers?

A Were they helpers?

Q Yes.

A In what sense, do you talk? Now, were they classified by us as helpers, were they classified --

Q Were they doing helpers work?

A Were they doing helpers work? No, they were not doing helpers work. These people that you see here were doing basically mechanic's work.

Q Were they classified as helpers?

A Could possibly have been classified as anything. They were workers.

Q Mr. Cordi, how did you happen to make these savings deposits in behalf of the individuals whose names are down on those records? Isn't it a fact that those deposits were made in accordance with the local 59 contract with the Contractor's Association?

A I have nothing to do with payroll. I don't know exactly what happens in payroll. I have never made a payroll out for

Desco Vitro Glaze as I stated in the previous hearing. Now when you ask me questions about payroll, you're asking me something that's beyond what I normally do in the Company. These things are handled by our payroll department.

Q Now, isn't it a fact that all the employees whose names are found on these records, which together constitute GC-8, that all of these employees are or were members of Local 59?

A You're asking me if that's a fact. Now, I cannot answer that. I've never reviewed these man's books. I have not gone into that extent of this type of thing.

Q Now, Mr. Cordi, also it would appear in time when you took over as President of Desco until around January of 1975, isn't it a fact that you made contributions to the Capital Area Masons' Pension Fund on behalf of the Local 59 employees employed by your Company as helpers, which contributions were directed toward the Local 59 Pension Fund.

A We paid the prevailing wage rates. We also paid the fringes that go along with it. And if that's where they want, that's where they went. It could possibly be a fact. Again, you're asking me if it's a fact. You have records here to show that we did. So then apparently, we did.

MR. MULKERN: Could we go off the record, please?

JUDGE MILLER: Off the record.

(Discussion off the record.

JUDGE MILLER: Back on the record.

111

vided by all the collective bargaining agreements involved in this case. So, I mean the question that Mr. Mulkern asked, and I objected to, was the fact that he -- the way he put it, that the contribution was made on behalf of the union, which is not of truth.

JUDGE MILLER: All right, perhaps you can rephrase your question.

MR. MULKERN: Actually, I think that Mr. Smitas' objection is well taken.

JUDGE MILLER: All right, first concession we've had here in quite a while.

Q (By Mr. Mulkern) Mr. Cordi, pursuant to whose contract were the employer contributions, which are indicated in this February 1973 record which is part of General Counsel's Exhibit 9, pursuant to which contract were these contributions made?

A If I read this correctly, I think it says here Capital Area Masons' Pension Fund.

Q But, pursuant to which contract?

A I don't know if there's any contract involved here.

Q Well, Mr. Cordi, did you employ at that time -- did you employ other individuals, in February of 1973, did you employ other individuals besides Coppola, Glantzis, Lovisa, Ingoldsby, Segatto, Mohamad, the six individuals who are specified on this form? Did you employ other individuals?

A Yes, we did.

Q Were some of them employed as mechanics?

A Yes.

Q Some of the other individuals?

A Yes.

Q And were contributions made in their behalf to the Capital Area Masons' Welfare Fund?

I really don't know if they have one. Maybe they do, maybe they don't.

Q Isn't it a fact that --

A That's not the Welfare Fund, that's the Pension Fund. Again, you're asking me questions about payroll and this type of thing that I don't get involved in. Now we're all over the State. Now we make contributions -- I know that some of these same employees' contributions are made to other locals, to other jurisdictions, and they're not members of those locals or jurisdictions. I know that if they're in Norwich, their benefits are paid whatever the prevailing wage rate in Norwich is, and whatever the fringe benefits are, they're paid there in Norwich. If they're down in Poughkeepsie, they same thing happens there.

Q Mr. Cordi -- I would ask --

A Now, please, I don't know the questions -- I do not get involved with these things. I am not in the payroll department.

JUDGE MILLER: All right, if you don't know the answer to a question, all you have to say is, I don't know.

THE WITNESS: But I can save you a lot of questions because you're asking me the same things that I don't know.

MR. MULKERN: Well, I'm just trying to see what you do know, Mr. Cordi. Maybe I can help you.

Q (By Mr. Mulkern) Mr. Cordi, I believe you answered before that you did employ other individuals in February of 1973 besides the six helpers who were listed on this particular form.

MR. SPITAS: I'll object to the characterization of these employees as helpers. It hasn't been established.

JUDGE MILLER: All right. I'll sustain that objection.

Q (By Mr. Mulkern) Is it a fact that you employed other individuals in February of 1973, besides the six individuals whose names are specified on this form?

A I answered that question already.

Q What was your answer?

A Yes, we did.

Q And were some of them employed as mechanics?

A Yes.

Q And did you have a collective bargaining contract with Locals 6 and 16 at that time?

A I can't answer to fact. I assume we did.

Q When do you know that you had a contract, a collective bargaining contract with Locals 6 and 16?

A You're talking to me about February of 1973.

Q Were you the owner of the Company at that time, Mr. Cordi?

A It's the second month I've been in this Company as owner of the Company.

Q All right then. Mr. Cordi, well --

A The second month that I was owner of this Company.

Q Fine, all right. Let's direct your attention to the month of June 1974. There are five individuals whose names are found on the record for that month, Glantzis, Ingolesty, Moratto, Mohabao and Segatto.

MR. SMITAS: Mr. Examiner, if I may, I may be able to clarify the problem that exists at this particular point in the questions that you're having Mr. Mulkern. I'm not interferring.

MR. MULKERN: Mr. Smitas, I'm not having any problems. I would prefer to proceed with the cross-examination.

MR. SMITAS: You know, I'm addressing the bench, Mr. Mulkern.

JUDGE MILLER: Well, I think I'd rather have Mr. Mulkern ask the witness questions, if you have an objection, you may state it.

MR. SMITAS: Well, I'll have an objection because the question is not specific enough. There are two area whole term? I didn't get your question, sir.

MR. MULKERN: Well, I'm asking specifically if he's a party to the agreement.

MR. SMITAS: Now?

MR. MULKERN: My understanding is that that agreement has expired. Was he a party to that agreement, during the term of that agreement.

THE WITNESS: The entire term of the agreement?

Q (By Mr. Mulkern) Well, first of all, were you a party to it during the entire term of the agreement?

A No.

Q You weren't? Were you a party to that agreement in February of 1972?

A I don't believe so. I'm having trouble answering these questions.

JUDGE MILLER: Let's go off the record.

(Discussion off the record.)

JUDGE MILLER: Back on the record.

Q (By Mr. Mulkern) Now, Mr. Cordi, isn't it a fact that you're aware that during the period of time, from the time that you took over Desco Vitro Glaze until at least December of 1974, that you were making contributions to the Local 59 Pension Fund?

A You asked me if it was a fact, if I was aware of something? You have the records, and if they show this, then

116

apparently we were doing this.

Q So you were making contributions to local 59?

A If you have records that show this, then apparently we were making a contribution or paying out monies for employees for some specific thing.

MR. SMITAS: Mr. Examiner, Mr. Mulkern has thrown in the term Local 59 again, and the records show that contributions were made by certain employees to a welfare pension fund.

MR. MULKERN: I would merely point out that Mr. Cordi had no difficulty answering that question on June 11, 1975, when he said yes to the question, "is it a fact, nevertheless, that you were aware during the period of time, from the time you took over until at least December of '74, that you were making contributions to the Local 59 fund, is that correct?" Judge Constantine asked Local 59 what kind of fund. Mr. Sheridan said the pension fund, and the witness said, yes.

THE WITNESS: To the pension fund, we didn't say which pension fund.

MR. MULKERN: To the Local 59 pension fund.

MR. SMITAS: Well, I would ask the Administrative Judge to take judicial notice of Mr. Çordi's testimony because you can take lines out of testimony that don't show the objections and conversations that took place at that time. We, at that time, are having the same difficulty as of the record when I call --

MR. TOCCI: I'm not sure that they haven't already been introduced -- or marked as an Exhibit, you know, I don't know what they are.

JUDGE MILLER: Off the record.

(Discussion off the record.)

JUDGE MILLER: Back on the record.

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Lavenberg, are you a member of any labor organization?

A I am.

Q And which labor organization is that?

A Local 59, Tile, Marble and Terrazzo Helpers.

Q And was there a time when you held an office with that Union?

A There was.

Q And what office was that?

A That was the Office of Business Agent, Treasurer, Financial Secretary.

Q And when did you hold that office?

A I held that office from the latter part of January 1972 until June 1, 1976.

Q And who did you succeed as Business Agent?

A I succeeded Charles Johnson.

MR. SMITAS: Mr. Examiner, may be we can stipulate to this witness's testimony?

JUDGE MILLER: Is there a possibility of that?

MR. MULKERN: Well, there are some credibility conflicts between his testimony and Mr. Cordi's testimony, as, at least as was brought out the last time.

JUDGE MILLER: As I indicated previously, if I have to resolve credibility, I want to see the witness testify.

Q (By Mr. Mulkern) And who did you succeed, Mr. Lavenberg as Business Agent?

A Mr. Charles Johnson.

Q Now, what work is performed by Local 59 members?

A The members perform the work of servicing the mechanic, whether he be tile, marble or terrazzo. He does the loading and unloading, distribution of materials, mixing, grinding, grouting, cleaning, etc.

Q Okay, in the Albany and Schenectady area, which unions represent the mechancis who the local 59 members service?

A Local 6 of Albany, Local 16 of Schenectady, Local 10 of Troy, all bricklayer locals.

Q And are locals 6 and 16 that you just referred to, are they the unions who are Respondents in these proceedings?

A They are.

Q And does Local 59 currently have collective bargaining contract in the area?

A We do.

Q And with whom is this contract?

A This contract is a -- it's between Local 59 and the Capital District Tile, Marble, Terrazzo and Slate Contractors Association.

Q Now, I show you what has been marked for identification as General Counsel's Exhibit 11, and ask you if that is the contract in existence between Local 59 and the Contractors Association?

MR. TOCCI: Is that GC-11?

MR. MULKERN: GC-11, yes.

THE WITNESS: Yes, sir, that's a copy of the current agreement.

Q (By Mr. Mulkern) Now, I direct your attention to Article 1 --

MR. SMITAS: Is he going to introduce that before he asks questions on it?

MR. MULKERN: I can introduce it now, or I can introduce it later. I thought that was my option. I will -- would ask now that it be received into evidence as General Counsel's Exhibit 11.

JUDGE MILLER: What's the term of that contract?

MR. SMITAS: I'll object to it. It's --

MR. MULKERN: It's effective until August 31, 1976, from the first of June 1973.

MR. SMITAS: This agreement is offered as General Counsel's Exhibit No. 11, is a contract between the charging party and some other party that is not a member of this hearing, or part of this hearing. It has nothing to do with Desco Vitro Glaze, nor does it have anything to do with Local 16.

JUDGE MILLER: Well, I take it as General Counsel's contention that it does have something to do with Desco. I'll receive it. I don't know what weight I'll give it. That will depend on the other evidence.

(The document, heretofore, marked General Counsel's Exhibit No. 11, was received in evidence.)

Q (By Mr. Mulkern) I direct your attention to Article 1 of this contract, and ask you if the second sentence, beginning, "This agreement shall cover" accurately describes the unit that Local 59 represents in this area?

A It does.

Q Now, is Desco a member of the Capital District Tile, Marble and Terrazzo and Slate Contractors Association?

A He is not.

Q And is there a term used to describe the contractors that operate as Desco does?

A Yes, there is.

Q And what is thatterm?

A We refer to them as independent contractors.

Q Now, what is the common name used to refer to men in the craft who were represented by Local 59?

A They are referred to as helpers.

Q And, when you took over as Business Agent, did Desco Vitro Glaze employ helpers?

MR. SMITAS: I'm going to object to that.

JUDGE MILLER: On what basis?

MR. SMITAS: On the basis as to whether or not he employed individuals who were members of -- he can ask whether they were members of the local union, but the characterization of common terms of helpers I don't believe is a proper question.

JUDGE MILLER: It is a little general.

MR. MULKERN: Well, I mean it's our basic contention here that there is an employee classification, which employee classification is, you know, clearly has existed throughout the last 50 or 60 years, which employee classification he's represented by the international union of which Local 59 is a member.

JUDGE MILLER: All right. Unless he can testify that, if he knows, whether they employ people whom he would call helpers. And if he observed them, he can tell what they did.

MR. MULKERN: Fine.

JUDGE MILLER: All right, with that understanding. I think that essentially sustains your objection.

Q (By Mr. Mulkern) When you took over as Business Agent, did Desco employ individuals who, based on your understanding of the work classification as helpers, were, in fact, helpers?

A Yes.

Q And what Union, if any, was the recognized collective bargaining representative for these individuals when you took over as Business Agent?

A Local 59.

Q And when you took over as Business Agent, which contract between Local 59 and the Contractors Association was in effect?

A The 1970 - 1973 agreement.

Q And from the time you took over as Business Agent, up until the 1973 through 1976 contract took effect, do you know what terms and conditions of employmentthe Desco helpers worked under?

MR. SMITAS: I'll object, until he identifies the individuals that he's referring to and what terms and conditions of employment he is also referring to.

JUDGE MILLER: Overruled, I think he can answer.

THE WITNESS: They worked under the conditions as set forth in the Local 59 working agreement.

Q (By Mr. Mulkern) And from the time that the 1973 through 1976 contract took effect, up to around February of

123

1975, do you know what terms and conditions of employment the Desco tile, marble and terrazzo workers helpers worked under?

MR. SMITAS: I'll make the same objection.

JUDGE MILLER: Overruled.

THE WITNESS: They worked under the agreement -- under the terms and conditions of the Local 59 agreement.

Q (By Mr. Mulkern) And, did Desco abide by the terms and conditions of that contract for that period of time?

A Yes, he did.

Q Now, since you've been Business Agent, up to around February of 1975, how did Desco hire its tile, marble and terrazzo workers helpers?

MR. SMITAS: I'll make the same objection. You know I would like to know what individuals he's referring to, and when these individuals were employed. I don't think it's a question that can be answered generally. You have to get each individual --

JUDGE MILLER: I'll overrule the objection.

MR. SMITAS: Now, so I don't have to keep --

JUDGE MILLER: You have a standing objection to this line of questioning so phrased.

MR. SMITAS: Okay, thank you.

Q How did Desco hire these individuals?

A Well, he's hired them by himself with men off the street, or he's employed them through local 59.

Q So, he called some of them through the hall, and some of them off the street?

A Well, some of them he called through the -- individuals but they were men from Local 59.

JUDGE MILLER: I'm going to cut you off just for a second here. You're talking about two periods of time really, part of which it was Desco under Mr. LaPore, part of it under Mr. Cordi.

MR. MULKERN: Right.

JUDGE MILLER: I think you'd better break down that last question.

MR. MULKERN: Okay, fine.

Q (By Mr. Mulkern) How about from the period of time, January of 1973 through February of 1975, how did Desco hire its tile, marble and terrazzo workers helpers?

A He hired them through -- men that he brought in himself, or through members of Local 59.

Q And did those individuals who he directly brought in himself, as you put it, did they become members of Local 59?

A Eventually they did, yes.

Q From the time you took over as Business Agent up to around February of 1975, was there ever a time when a majority of the helpers employed by Desco were not Local 59 members?

A No. there was never such a time.

Q And from the time you took over as Business Agent, and up to around February of 1975, which union, if any, was recognized by Desco as the collective bargaining representative --

MR. TOCCI: I object.

MR. MULKERN: -- for Desco's tile, marble and terrazzo workers helpers?

MR. TOCCI: Asking for a legal conclusion.

JUDGE MILLER: I think that does call for a conclusion. I'll sustain the objection.

Q (By Mr. Mulkern) Since you have taken over as Business Agent, do you know if the job duties of Desco's tile, marble and terrazzo workers helpers have ever changed?

A Not to my knowledge.

Q Now, does Local 59's current agreement with the Contractor's Association provide for travel pay?

A It does.

Q And how about the prior contract, the 1970 through 1973 contract?

A It did.

Q Now, directing your attention to in or around November of 1973, did you become aware of a dispute concerning payment of travel pay?

A Yes, I did.

Q And what, if anything, did you do about it? What contract did this concern?

A This concerned the contract at Skidmore College.

Q And what employer?

A With Desco Vitro Glaze.

Q And, so what did you do?

A An arbitration meeting was called, as outlined in the agreement, and such meeting was held at the Albany Labor Temple, 390 Third Street.

Q And who was present at this arbitration meeting?

A At this arbitration, there was three Union members, namely, myself, Frank Glogowski, Steve Lackow (phonetic), and three --

Q And did those three individuals hold offices with Local 59, Glogowski and --

A Yes, they did. And there were three contractors from the Association, namely, Dan Lanzetta, George DiVenato, and Victor Martin (all phonetic).

Q And where did this proceeding take place?

A At the Albany Labor Temple, 390 Third Street.

Q And what happened -- who else was present at this meeting?

A Mr. Cordi was present.

Q And what happened at this meeting? What was discussed?

A Well, I had stipulated at the meeting that expenses was not paid by Desco Vitro Glaze for that particular job, as prescribed in the agreement, and Mr. Cordi replied that he did not have to pay such expenses, as he did not have a signed contract with Local 59.

Q And, so what happened? What else happened at this meeting?

A I can't recall just now.

Q Now, prior to the above meeting, did you realize that Desco was not in signed agreement with Local 59 for this period of time?

A I did not.

Q What made you think that they were?

MR. SMITAS: I'm going to object to that. You know, operation of mind is completely irrelevant point in this hearing, the issues and the complaint.

MR. MULKERN: I would state to the extent that he can point to particular concrete facts that --

MR. SMITAS: I think these facts ought to be brought out, but operations of mind are never admissable.

JUDGE MILLER: Well, frankly, I don't much care whether he thought there was a signed contract or not. If there are facts that indicate a relationship, if he can bring them out, I'll overrule the objection. I'll let him answer.

THE WITNESS: Kindly repeat the question.

Q (By Mr. Mulkern) What made you think that Desco was in signed agreement with Local 59?

A I was under -- I had presumed that he was a member of the Association, and through prior dealings with the Company, I had -- I was under the impression that there was a signed contract.

Q Well, what specifically led you to believe that? What did Desco Vitro Glaze do specifically which would lead you to believe that they were --

A I was under the impression that he did have a signed contract because he was abiding by the conditions of the agreement.

Q And what specific conditions?

A I don't know what you mean by the question.

Q What was he doing to the Local 59 members? What was he giving to the Local 59 members which would lead you to believe that --

A Well, he was paying the wages and the fringe benefits and expenses as prescribed in the agreement.

Q Now, I'd like you to look at, what has been introduced into evidence as General Counsel's Exhibit 8, and ask you if all of the individuals whose names appear on those records were, in fact, members of Local 59 at the time that their names appeared on those records?

MR. TOCCI: I object, a question of relevancy.

JUDGE MILLER: Overruled.

THE WITNESS: These individuals are or were members of Local 59.

Q (By Mr. Mulkern) At the time the contributions were made?

A Yes.

Q And whose savings fund was the money reflected on those forms paid into?

A In the -- contributions were made to the Fidelity Bank and there were monthly reports of savings deposits for tile, marble and terrazzo helpers of the Capital district.

Q And so whose fund were they paid into?

A They were paid into Local 59 fund.

Q And, Mr. Lavenberg, did you receive -- I direct your attention to the top, left hand corner, to where it says, green - local union --

I would stipulate that on all of the copies, GC-8, in the top left hand corner, it's rather blurry, and it should say White - Bank copy, Green - Union Local* mail to bank, Pink - file copy. Do you agree to that?

MR. SMITAS: I agree that it's on the thing.

JUDGE MILLER: All right.

MR. MULKERN: That's all I'm asking. Do you agree that it's on --

MR. SMITAS: Yes.

JUDGE MILLER: Very well, I'll receive the stipulation.

Q (By Mr. Mulkern) Now, I direct your attention to the upper left hand corner of these savings deposit reports, and ask you, did you, in fact, receive copies of these monthly deposits?

A Yes, I did.

Q And, from whom did you receive these copies?

A From the Fidelity Bank of Colonie.

Q And you received copies of all of these savings deposits which constitute GC-3?

A They're on file in our office.

Q Now, Mr. Lavenberg, I now show you what's been marked for identification and, in fact, introduced into evidence, as General Counsel's Exhibit 9, and ask you what that is?

A Those are contribution forms of the Capital Area Masons' Welfare and Pension Fund.

Q And, in behalf -- are the individuals, all the individuals whose names appear on the records for the respective months, are all of those individuals, or were they, at the time that the contributions were made, members of Local 59?

JUDGE MILLER: Let the record reflect that the witness is going through each page of the Exhibit.

THE WITNESS: Yes, sir. They are or they were members of Local 59.

Q (By Mr. Mulkern) And in the case of those individuals who were, they were members of Local 59 at the time that's reflected by these records, the individual records?

A That's correct.

Q Now, I direct your attention once again to these records, and ask you pursuant to what contract were these contributions made in behalf of these individuals?

MR. SMITAS: I'll object to the form of the question. There's been no establishment of a contract. Nor -- he's asking to give an opinion on something which the Company did or did not do.

JUDGE MILLER: I think the objection is well taken. I'll sustain.

Q (By Mr. Mulkern) Now, Mr. Lavenberg, a couple of minutes ago we were discussing travel expenses which weren't paid to individuals who worked at the Skidmore College job up at Saratoga. Did Iesco ever pay the travel expenses in dispute there?

A Eventually, he paid it.

Q When was that?

A Well, I contacted some of the members about two weeks later, and they told me that had received it.

Q Now, Mr. Lavenberg, I show you what has been marked for identification as General Counsel's 13, and ask you if you can identify that for me?

(The document above-referred to was marked General Counsel's Exhibit No. 13 for identification.)

A Y, it is. It's a letter that I have sent to Lesco Vitro Glaze with three copies of our working agreement.

Q And is that your signature?

A It is.

MR. MULKERN: I would ask that this be received into evidence as General Counsel's Exhibit No. 13.

MR. SMITAS: For what purpose is he introducing it? I don't know --

MR. MULKERN: Well, I think it's plane on it's face what it's being introduced for.

JUDGE MILLER: Let me see it. I'm not sure what weight I would give it, but I'll receive it.

(The document, heretofore marked General Counsel's Exhibit No. 13 was received in evidence.)

Q (By Mr. Mulkern) Now after -- as indicated in that letter, did you, in fact, enclose a number of copies of the Local 59 agreement?

A We enclosed three copies.

Q And what were the three copies for?

A One copy to be retained by the employer and two copies to be returned to my office.

Q Okay. And after you sent the agreements to Cordi, did you ever contact him about signing?

A About two or three weeks later, yes.

Q Where and how?

A Once on the job site and shortly after that in his office.

Q Okay, and what did Mr. Cordi say when you asked him to sign the contract?

A He said that he had --

Q Okay, in the first conversation, what did Mr. Cordi say?

A I asked him whether he had received the contracts and whether he had gone over them, and he said he had them on his desk, but he was very busy and hadn't had a chance to go through them yet.

Q And how about the second time you spoke to him?

A The second time at his office, I asked him once more, and he told me as soon as he did get a chance, he would get them back, or words to that effect.

Q In any event, did he say on these occasions that he would not sign?

A No, he did not.

Q Now, directing your attention to December of 1974, who were the tile, marble and terrazzo workers helpers employed by Desco at that time?

A December 1974?

Q Yes.

MR. SMITAS: I have a continuing objection to the use of the term helpers.

JUDGE MILLER: Yes, you do.

MR. SMITAS: Thank you. I would also enter an objection on this. Are we once again when he uses the word helpers, is it with a capital 'H' or is it with a small 'h', or is he referring to people who Mr. Lavenberg felt were working as helpers in December of 1974 by showing you the December '74 record of contributions by Desco to the Capital Area Masons' Welfare Fund. And I ask you if all the individuals whose names appear thereon were working as helpers in December of 1974?

A They were, but there's one name that's not on there.

Q And whose name was that?

A John -- J.C. Hamilton.

Q J.C. Hamilton, and why was his name -- well, I really can't ask you why his name wasn't on there, but he was working there at that time?

A He was working anddoing the work traditionally classified as helpers work.

Q And these other individuals were also doing the work traditionally classified as helpers work?

A They were.

Q Now, how many of these five individuals, plus J.C. Hamilton, were members of Local 59 in December of 1974, and January of 1975, for that matter?

A These five individuals, namely, Dominick Marrato, Allie Mohamad, John Segatto, Dominick Coppola, Constantine Psarras were members of Local 59

Q All ofthose were members of Local 59?

A Yes, excluding J.C. Hamilton who was not.

Q J.C. Hamilton was not a member of Local 59 at this time?

135

A He was not.

Q Now, directing your attention to January of 1975, were there any additional tile, marble and terrazzo workers helpers individuals performing the work traditionally performed by tile, marble and terrazzo workers helpers hired by Desco Vitro Glaze?

MR. SMITAS: I'm going to object. It must be establisned how this information -- some basis for this conclusion that he's going to now make.

JUDGE MILLER: I would sustain that objection.

Q (By Mr. Mulkern) Are you familiar -- do you know whether in January of 1975 Desco Vitro Glaze hired any additional individuals to work within the traditional classification of helpers?

A Yes, he did.

Q And, how do you know that he did so?

A I was approached by this member -- by this individual who requested membership in the Local 59.

Q And did you actually visit him on the job site?

A I was informed by my President who was contacted by this individual and a friend of his who was employed by the Company that he wished to make application into Local 59.

MR. SMITAS: Mr. Examiner, I move to strike that testimony as not being responsive to the question that was asked. The question that was asked was --

JUDGE MILLER: I know what the question was he asked. The question that was asked was whether he visited him on the job site.

MR. SMITAS: No --

JUDGE MILLER: That was the last question that was asked, as I recall it.

MR. SMITAS: Well, the question before that then, it was asked how he knew that Desco hired these people as Local 59 people. And then this man -- in January of 1975, and he answered by the fact that this man came to him and made an application for membership in Local 59. And, I'm saying that that doesn't prove that Desco hired this man as a helper.

JUDGE MILLER: I know it doesn't. I'm not going to draw conclusions from it that aren't warranted by the answer. I'll overrule your objection.

Q (By Mr. Mulkern) And who was this individual who, to your knowledge, was hired by Desco in January of 1975 to work as a helper?

A His name was John Sitiriou.

Q And was there anyone else hired a little bit later to work as a helper?

A Yes, sir.

Q And who was that?

A Dimitrios Evangelidis.

137

Q And were these individuals Local 59 members at the time of their hiring?

A They were not.

Q Now, directing your attention to sometime in December of 1974, did you have a conversation with J.C. Hamilton?

A Yes, I did.

Q And where did this conversation take place?

A At the job site.

Q And, what did you say to him, and what did he say to you?

MR. SMITAS: I'm going to object. It has nothing to do -- the question between Mr. Hamilton and Mr. Lavenberg --

MR. MULKERN: I'll withdraw the question.

JUDGE MILLER: Very well.

Off the record.

(A recess was taken to change the tape)

JUDGE MILLER: Back on the record.

Q (By Mr. Mulkern) Directing your attention to January of 1975, did you have a conversation with Frank Glogowski?

A Yes, I did.

Q And who's Frank Glogowski?

A He's the President of Local 59.

Q And what did this conversation concern?

MR. SMITAS: I'll object.

JUDGE MILLER: I'll allow it up to this point, what the conversation actually was, I think I would cut off.

Q (By Mr. Mulkern) Pursuant to that conversation, did you visit the Desco job site, on or about January 24, 1975?

A After the conversation or before?

Q After the conversation.

A Yes, I did.

Q On or about January 24, 1975?

A Yes, I did.

Q And which job site was this?

A The mental health lab on the Empire State Plaza.

Q And what time was it when you went there?

A It was probably early afternoon.

Q Okay, and what did you do when you were there?

A I was there and the first person I sawwas Allie Mohamad and had a very short conversation with him, and then I was approached by J.C. Hamilton.

Q And what happened then?

A I had a book in my hand. He asked me if that was the application --

MR. SMITAS: I'm going to object.

MR. MULKERN: I think that this should be admissible to show that these two individuals did make application to Local 59. To the extent that this is true, I think that it goes beyond hearsay.

JUDGE MILLER: All right, overruled.

THE WITNESS: I was approached by J.C. Hamilton who asked me if I had an application book in my hand. I told him I did, and he told me he was ready to make application to Local 59.

Q And, so what did he do?

A I filled out the application with the information that he gave me, and he signed it, and I got two signatures on the voucher on the application.

Q Now, Mr. Lavenberg, I show you what's been marked for identification as GC-5, and ask you is that the application which Mr. Hamilton filled out on this day?

A It is.

Q And did he do anything else besides make out the application?

A He placed a deposit of $100 with me, on which I gave him a receipt.

Q And, following this conversation with Mr. Hamilton, what did you do?

A I was approached by Constantine Psarras, and with Constantine Psarras was John Sitiriou.

Q And, what did you do then?

A Constantine Psarras told me that his friend, John Sitiriou -

MR. SMITAS: I object.

MR. MULKERN: Once again, this goes to the application process.

JUDGE MILLER: All right, I'll overrule the objection.

THE WITNESS: Constantine Psarras told me that John Sitiriou wished to make application into Local 59.

Q (By Mr. Mulkern) And, so what did you say to Mr. Sitiriou, and what did Mr. Sitiriou say to you?

MR. SMITAS: I have a continuing objection.

THE WITNESS: We proceeded to make out the application of which he signed, and which was -- had two signers on the voucher, and he also presented me with $100 as a down payment on his initiation, upon which I gave him a receipt.

Q (By Mr. Mulkern) Now, Mr. Lavenberg, I show you what's been marked for identification as General Counsel's Exhibit 4, and ask you if that is the application which Mr. Sitiriou filled out on that day?

A Yes, it is.

Q Now, Mr. Lavenberg, with regard to Mr. Sitiriou, did the Union approach him first about joining, or did he approach someone from the Union himself concerning joining?

A He approached, with Constantine Psarras, he approached the President of Local 59.

Q Now, directing your attention to on or about January 26, 1975, did you receive a phone call from Mr. Cordi?

A I did, early in the evening.

Q And, what did he say to you, and what did you say to him?

A Mr. Cordi had told me that I did a sneaky thing by going on the job site and signing up these two people when I did it with coercion, and possibly the threat of their employment, or words to that effect.

MR. SMITAS: What was that last part? I didn't get it, Mr. Examiner.

JUDGE MILLER: "or words to that effect." Did you get it to that point?

MR. SMITAS: Just the immediate few words before that. I'll ask to strike it because if that is, "words to that effect", I'm not sure what he said anyway.

MR. MULKERN: Look, why don't we let the witness answer again. That's fine by me.

JUDGE MILLER: All right.

Q (By Mr. Mulkern) To the best of your recollection, what did Mr.Cordi say to you, and what did you say to him?

A To the best of my recollection, Mr. Cordi said to me that that was a sneaky thing I did, going down on the job site and signing up these two people. That they didn't want to sign, that I had coerced them into signing such applications.

Q And, what did you say?

A I told him that they made the application of their own free will, and there was no coercion at all on my part.

Q And what did Mr. Cordi say?

A Mr. Cordi said to me, he said, well, you come down on the job site in the morning, and we'll approach these two individuals and I'll prove to you that you had coerced them.

Q Now, in fact, Mr. Lavenberg, had you said anything to either of these two individuals to coerce them? Had you said anything that they could lose their jobs if they didn't join, or anything of that nature?

A I never made no such statement.

Q Now, directing your attention to Monday, January 27, 1975, did you, in fact, go to the Desco job site at the Empire State Plaza?

A I did.

Q And who did you meet there?

A I met Mr. Cordi and Mr. King.

Q And what did the three of you do after you met?

A J.C. Hamilton was in the immediate vicinity, and the three of us approached Mr. Hamilton.

Q And, what did you and the other individuals say to Mr. Hamilton, and what did he say?

A Well, Mr. Cordi said to Mr. Hamilton, he says, Mr. Lavenberg coerced you into making this application, didn't he? And Mr. Hamilton replied, yes, he did. And I told Mr. Hamilton that I did not coerce him in any way, but if he didn't want to join Local 59 on his own volition, that I would return his initiation fee, upon which I took a blank check from my pocket and made out a check for $100 and returned it to Mr. Hamilton.

Q Now, after speaking to Mr. Hamilton, what did you do?

A Mr. Cordi, Mr. King and myself proceeded downstairs on the lower level to the loading dock and approached John Sitiriou.

Q And, what did you do then?

A Well, Mr. Cordi asked Mr. Sitiriou as to whether I had coerced him or threatened him in any way in making application into Local 59, whereby Mr. Sitiriou didn't answer. But I said to Mr. Cordi, I said, rather than put the man on the spot, I'll return him his $100 also, upon which I took another blank check out of my pocket. I made it out and handed to to Mr. Sitiriou.

Q Now, did Mr. Cordi, do you recall anything else that Mr. Crodi said to Mr. Sitiriou?

A Well, yes. Mr. Cordi said to Mr. Sitiriou, are you going to stay with me, or are you going with him?

Q And what happened then?

A Well, that was -- I believe that was the time that I told him that you're putting the man on the spot, and rather than do that, I would return him his initiation fee.

REPORTER: Would you repeat that last question.

MR. MULKERN: The last question?

JUDGE MILLER: How far back, the last question and answer?

144

REPORTER: Yes.

JUDGE MILLER: Would you repeat what you said regarding the other statement by Mr. Cordi?

THE WITNESS: Well, Mr. Cordi said to Mr. Sitiriou, he says, are you going to stay with me or are you going with him? And I said to Mr. Cordi, rather than put the man on the spot like that, I'll return him his initiation fee also.

Q (By Mr. Mulkern) Okay, and then you made out a check?

A I took a blank check from my pocket and made it out for the $100, and I returned to to Mr. Sitiriou.

Q Now, Mr. Lavenberg, I show you what has been marked for identification as General Counsel's Exhibit 14, and ask you if that is the check which you gave to Mr. Sitiriou?

A That is the check that I returned to Mr. Sitiriou.

MR. MULKERN: I would ask that this be received into evidence as General Counsel's Exhibit 14.

MR. TOCCI: No objection.

JUDGE MILLER: Mr. Smitas?

MR. SMITAS: No objection.

(The document above-referred to was marked General Counsel's Exhibit No. 14 for identification and received in evidence.)

JUDGE MILLER: Off the record.

(Discussion off the record.)

JUDGE MILLER: Back on the record.

All right, proceed.

Q (By Mr.Mulkern) Now, Mr. Lavenberg, I show you again what has been marked for identification as General Counsel's Exhibit 4, and ask you how the writing, which is in the middle, happened to be placed on that application?

A That afternoon, when I had returned to my office, I had taken the two applications and I wrote on it, application void, refunded 1/27/75.

Q Now, had you, in fact, ever forced Mr. Sitiriou to join Local 59?

A No way.

Q And, in fact, who first made the approach to Local 59?

A The approach was made by Constantine Psarras on behalf of John Sitiriou.

Q Now I show you, it's been marked for identification as General Counsel's Exhibit 5, and ask you how the writing in the middle of that application happened to be placed there.

A It was placed at the same time as the other application, application void, refunded 1/27/75.

MR. MULKERN: I would ask that General Counsel's Exhibits 4 and 5 be received into evidence at this time.

JUDGE MILLER: I'll receive them.

(The documents heretofore marked as General Counsel's Exhibits 4 and 5 were received in evidence.)

Q (By Mr. Mulkern) Now, in fact, concerning Mr. Sitiriou, did there come a time in February of 1975 when Sitiriou again made application to Local 59?

A He did.

Q Okay, now Mr. Lavenberg, I show you what has been marked for identification as General Counsel's Exhibit 15, and ask you if this is the application which Mr. Sitiriou made out on the date shown, February 10, 1975?

MR. SMITAS: I'd like to find out whether or not he was there when he made the application out.

Q (By Mr. Mulkern) Were you there when Mr. Sitiriou made this application out?

A My signature is on the voucher.

MR. SMITAS: That doesn't answer the question.

THE WITNESS: I had to be there. That's my handwriting.

Q (By Mr. Mulkern) In other words, you were one of the witnesses to this signing?

A Right, and I filled it out and all Mr. Sitiriou did was sign it.

MR. MULKERN. I would ask that this be received into evidence as General Counsel's Exhibit 15.

JUDGE MILLER: Received.

(The document above-referred to was marked General Counsel's Exhibit No. 15 for identification and received in evidence.)

Q (By Mr. Mulkern) Now, sometime between January 27, 1975, and January 30, 1975, did you approach Mr. Cordi again about signing the agreement?

A I did.

Q This being the Local 59 agreement with the Contractors Association?

A Yes.

Q And where was this that you approached him?

A On the job site.

Q And what did Mr. Cordi say?

A Mr. Cordi told me at that time that he had no intentions of signing a Local 59 agreement.

Q Now, directing your attention to sometime the first week of February 1975, did you become aware of anything that Mr. Cordi was having the members of your bargaining unit do.

A I was on the job site --

MR. SMITAS: I object to the form of the question, your bargaining unit.

JUDGE MILLER: All right, I'll sustain it to that extent.

Q (By Mr. Mulkern) Did you become aware at this time of anything that Cordi was having members of your Local, who were employed by Desco, do?

A Yes, I was.

Q And what was that?

A That members who were making application into Locals 6 and 16, under the chemical process workers trade.

MR. SMITAS: I'll move to strike that because talking about making someone do something, and that's I think an ultimate issue in this hearing. It has no foundation. It doesn't tell the circumstances. It doesn't tell the events that occur.

JUDGE MILLER: I think that is a valid objection.

MR. MULKERN: I didn't use the word make, by the way.

MR. SMITAS: Could we have the question and answer read back?

JUDGE MILLER: Well, why don't you rephrase it, and ask it again.

MR. SMITAS: You're striking that answer?

JUDGE MILLER: I'll strike that question and answer and start over again.

Q (By Mr. Mulkern) Now directing your attention to some time during the first week in February 1975, did you become aware of any problems concerning members of Local 59 who were employed by Desco Vitro Glaze?

A Well, I was approached by one of my members who told me that he had made application into Local 6 of the bricklayers under the chemical process workers trade.

Q Now, directing your attention to on or about February 18, 1975, did you visit the Desco job site?

A I did.

Q And did anyone else accompany you?

A Yes.

Q And, who was that?

A Mr. Gerald Bombassaro, the international representative.

Q Of your Union?

A Of our international, correct.

Q Okay. And what happened when you got to the job site?

A Well, we got to the job site somewhere in the middle of the afternoon, I believe it was, and we approached, the first person we saw was Allie Mohamad, and we approached Allie Mohamad.

Q And, after speaking with Mohamad, who did you speak with?

A Well, we spoke to Mohamad just for a few minutes, and then Mr. Bombassaro and I had approached Mr. King and Mr. Cordi.

Q And what did -- what was the conversation that ensued?

A Well, Mr. Bombassaro had asked Mr. Cordi as to what reason that why he was not -- why he didn't want to sign the Local 59 agreement. Whereby Mr. Cordi replied that he was changing his method of operation, and that he was being harassed by the Business Agent of Local 59, and that he didn't want Union problems, and he was -- he wouldn't have any need for members of Local 59.

Q And then what else was said? Did he say how the --

MR. SMITAS: No, I'm going to object, if he's going to lead him.

JUDGE MILLER: Overruled.

Q (By Mr. Mulkern) Did he say how the Local 59 Business Agent was harassing him?

A Well, he had told Mr. Bombassaro that the Business Agent of Local 59 had brought him up on charges at the arbitration board pertaining to expenses at Saratoga, New York, and by the incident on a non-resident of New York State being in Desco's employ.

Q And so after this part of the conversation, what happened then?

A Mr. Cordi had called over -- Mr. Mohamad was there, but he had called over John Segatto and Dominick Moratta and he asked the three individuals, hadn't we been one big happy family, haven't I treated you good, he says, what has this Local 59 and this individual done for you?

Q Now, when he said this individual, what did he do.

A He pointed to me.

Q Okay. And what else was said then?

A Mr. Bombassaro told Mr. Cordi that, he says, what do you expect these men to say when you have the hammer over their head? And, in the conversation, Mr. Bombassaro asked Mr. Cordi as to whether the employees who are members of 59, whether their membership would affect their employment, and Mr. Cordi replied that would be hard to say.

Q Now, is your international participating member of the

Impartial Jurisdictional Disputes Board of the AFL-CIO in Washington?

A Yes, we are.

Q And what about the Bricklayers International Union, are they also participating members of that organization?

A They are also.

MR. TOCCI: I object unless he lays some foundation for that question.

JUDGE MILLER: Overruled, I think that as a Business Agent, he would know.

Q (By Mr. Mulkern) Did there come a time when your international submitted the dispute concerning these workers at Desco to the Impartial Jurisdictional Disputes Board?

A Yes, we did.

MR. MULKERN: I would like this marked for identification, please.

JUDGE MILLER: What is this, GC-16?

MR. MULKERN: 16.

(The document above-referred to was marked General Counsel's Exhibit No. 16 for identification.)

Q (By Mr. Mulkern) Now, Mr. Lavenberg, I show you what's been marked for identification as General Counsel's -- before asking you that, was there a decision rendered by the Impartial Jurisdictional Disputes Board concerning the instant case?

A There was a decision rendered on the work in question.

Q Okay. And I show you what's been marked for identification as General Counsel's Exhibit 16, and ask you if that is the decision that was reached by the Impartial Jurisdictional Disputes Board?

A That is the decision, that's correct.

MR. MULKERN: I would ask that this be received into evidence as General Counsel's Exhibit 16.

MR. SMITAS: I'll object to that, that there is no showing that this Board had any jurisdiction in making its decision. The decision by this Board is not binding upon anybody involved in this room, particularly not the Respondent, Desco Vitro Glaze. Since there is no foundation, and Desco Vitro Glaze has stipulated to the National Joint Board for the settlement of jurisdictional disputes.

MR. MULKERN: In any event, whether or not the Respondent employer is a party to this disputes Board, it is clear that the Respondent Unions are.

MR. TOCCI: I will not concede that at this point. I don't happen to have anyone here right now, you know, to check this out.

JUDGE MILLER: Well, I'm going to receive the document. I don't know who it's binding on at this point.

(The document heretofore marked General Counsel's Exhibit No. 16 was received in evidence.)

Ask him what he did at that particular point.

MR. MULKERN: Okay, fine.

Q (By Mr. Mulkern) Following February, the beginning of February, the first week in February of 1975, did there come a time when some of the members of Local 59 who were employed by Desco Vitro Glaze stopped paying dues to Local 59?

A Yes, there was.

Q And who were these individuals, and when did they stop paying dues?

A Dominick Moratta and Dominick Coppola stopped paying dues in February of '75, and John Segatto stopped paying dues in March of '75.

MR. SMITAS: Would you -- can we go off the record for just a minute?

JUDGE MILLER: Off the record.

(Discussion off the record.)

JUDGE MILLER: Back on the record.

Q (By Mr. Mulkern) After the members of your bargaining unit of Local 59, employed by Desco, joined Locals 6 and 16, did their pay rates change?

MR. SMITAS: I'm going to object to the characterizations made, not to the ultimate, whether or not their pay rate changed, but, bargaining unit, and he's using all these conclusionary terms.

JUDGE MILLER: I can evaluate them for what they are.

MR. MULKERN: Actually, I think in this particular case, I specified everything in totally non-conclusionary terms.

JUDGE MILLER: Well, I'm not sure that you did, but I can evaluate them so, what the conclusions are. I'll allow it.

Q (By Mr. Mulkern) All right. In any event, did there come a time when the pay rates of some of these individuals changed?

A Yes, they did.

Q And, after that time, did Desco continue to abide by the Local 59 contract?

A No, he did not.

Q And, did anyone from Desco consult or bargain with Local 59 before making the changes?

A They did not.

Q Now, at any time since you took over as Business Agent, did Joe Cordi, or anyone else from Desco, ever claim that Local 59 did not represent the majority of the tile, marble and terrazzo workers helpers employed by Desco?

A They did not.

Q Now, directing your attention to Monday, March 31, 1975, what, if any, action did Local 59 take?

MR. SMITAS: What was the date?

MR. MULKERN: Monday, March 31, 1975.

A Pickets were established at the Mental Health Lab building on the Empire State Plaza.

Q And did Desco have a job at that site?

A He did.

Q And who was this picketing against?

A It was against the Company.

Q And anyone else?

A Locals 6 and 16 of the Bricklayers Union.

Q And did Local 59 picket anywhere else?

A Yes, they did.

Q Where was that?

A A week later, they picketed at the Glens Falls Hospital, Glens Falls, New York.

Q And what did the picket at the Empire State Plaza read?

A Local 59 tile marble helpers claims all work awarded in the recent decision by the Impartial Jurisdictional Disputes Board against Desco Vitro Glaze and Locals 6 and 16, B.M.B.I.U.

Q And how about the Glens Falls picket signs?

A Desco Vitro Glaze refuses to recognize the jurisdiction of the terrazzo helpers of Local 59, tile and marble helpers, Albany, New York.

Q And how long did the picketing last?

A Picketing on the Empire State Plaza lasted two weeks, and the picketing at Glens Falls Hospital lasted one week.

Q What was the cause of the picketing?

A The picket line was established because of a unfair labor practice of the Respondent.

MR. SMITAS: I'll object and move to strike.

JUDGE MILLER: That's awfully conclusionary. I'll sustain the motion to strike.

Q (By Mr. Mulkern) Now, how did it come about that the picketing stopped?

A A meeting was held at the Tower Building of the Empire State Plaza with General O'Hara.

Q Who is General O'Hara?

A General O'Hara, at that time, was the head of the Office of General Services.

Q For the State?

A For the State of New York, that's right.

MR. SMITAS: Well, I'm going to object unless he established that my client was there at this meeting.

JUDGE MILLER: Well, let's find out. Let's carry it to the next step.

Q (By Mr. Mulkern) Was a representative of Desco Vitro Glaze at this meeting?

A If I remember correctly, General O'Hara tried to contact Desco Vitro Glaze to attend that meeting, but he could not get him, and he was not available. But he was not there at that meeting.

Q And what occurred at this meeting?

MR. SMITAS: I'll object.

JUDGE MILLER: I'll sustain the objection.

Q (By Mr. Mulkern) Now, during the time that you have been Business Agent, has there ever been an occasion, or had there ever been an occasion, before January 1975, when a member of your bargaining -- when a member of Local 59 at Desco, in other words, a helper, became a member of the Masons bargaining unit as a mechanic?

A Yes, there was.

Q And could you give us the name of one individual who, in fact, did change that way?

A His name was Chris Glantzis.

Q And when did that occur that he changed from a helper to a mechanic?

A On or about October of 1974.

Q And how did it occur? What was the process by which he changed from a helper to a mechanic?

A He had made a telephone call to me, and told me that he had the opportunity to become a mechanic, and he would like to become a mechanic. And I told him that since he had met his obligations to Local 59 to date, that he did have the approval of Local 59.

Q And, by meeting his obligations to date, what did you mean?

A Well, that his dues and assessments and any other obligations to the Local was paid to date..

Q Okay, and so after speaking with Glantzis on the phone, what did you do?

A I made a call to Vince Riggi, the Business Agent of Local 60 in Schenectady, and I told him that Chris was clear to make application in Local 60.

Q And what happened then?

A He was transferred into -- he made application into Local 60 and he was eventually dropped from Local 59.

Q And have there been any other occasions since you were Business Agent that a Desco employee, who was a member of Local 59, a member of that bargaining unit, working as a helper, transferred to the Masons bargain unit and became a mechanic?

A Is this for Desco?

Q For Desco itself.

A To my knowledge, Chris Glantzis was the only one.

Q During the time that you were business agent?

A During the time I was business agent.

Q How about other employers?

A There were two other occasions.

Q And was it the same procedure? The individual called you?

A The same procedure.

Q So, then, is it a fact that prior to January 1975, when an employee of Desco, or another contractor, who is a member of Local 59 working as a helper, wished to transfer to the Masons bargaining unit and become a mechanic that he would contact you first, and if he's a paid up member, you would contact the appropriate Masons' Business Agent and give your approval to the transfer?

MR. SMITAS: Oh, I'll object to that.

JUDGE MILLER: All you're doing is summing up his testimony?

MR. MULKERN: Yes.

JUDGE MILLER: I don't think that's necessary. I'll sustain the objection.

Q (By Mr. Mulkern) In any event, in January or February, more properly February of 1975, when certain members of your bargaining unit joined Local 6 and Local 16, were you contacted by anyone before hand for your approval?

A I was not.

Q And have you been so contacted to date?

A No, I was not.

MR. MULKERN: Could we go off the record for just a minute?

JUDGE MILLER: Off the record.

(Discussion off the record.)

JUDGE MILLER: Back on the record.

MR. MULKERN: I would like this marked for identification

159a

as General Counsel's 17.

(The document above-referred to was marked General Counsel's Exhibit No. 17 for identification.)

MR. TOCCI: You know, I just had a thought. I'd like to make a belated objection to Mr. Mulkern's use of the word, "joined" local 6 or 16 in his last question, absent any proof of record that anyone has joined Local 6 or 16 that's been involved in these proceedings of today.

JUDGE MILLER: All right, I'm not going to strike any of his testimony.

MR. MULKERN: I believe that's a question of fact, really.

MR. TOCCI: I just want to note that I didn't concede in, you know, his use of that word, "joined."

JUDGE MILLER: All right, so noted.

Q (By Mr. Mulkern) Now, Mr. Lavenberg, did there come a time when you sent a letter to Desco Vitro Glaze in behalf of Local 59 members on strike against Desco, making an unconditional offer to return in their behalf?

A I believe I sent such letter.

Q Now, I show you what's been marked for identification as General Counsel's 17, and ask you if that's a copy of the letter which you sent to --

A Yes, I did send that letter.

AFTERNOON SESSION

1:30 p.m.

JUDGE MILLER: Do you have any cross examination for this witness?

CROSS EXAMINATION

Q (By Mr. Tocci) Mr. Lavesberg, do you -- have you read the decision of the, what is it, the Joint Board that was put in here?

A Impartial Jurisdiction Disputes Board.

Q You're familiar with it?

A Yes.

Q It's General Counsel 16. Did you appear before this Board and tell them what the dispute was about?

A No, I did not.

Q Did anyone from your Local?

A No, they did not.

Q Do you know who did appear on behalf of Local 59?

A Yes, I do.

Q Who did?

A Gerald Dombassaro, our International Representative.

Q And do you know who appeared on behalf, if anybody, on behalf of Local 6 or 16?

A I do not know.

Q You indicated that you had a member or a member had moved up or laterally or into this Local 6 or 16 from your

Union. Was it Mr. Glassis?

A It was.

Q And that was in October of '74?

A I believe that was the date.

Q That's what you said, I think. Now, Glassis had been working for Desco, right?

A Correct.

Q How long would you say, prior to his going into Local 16?

A I'd venture a guess a few years anyway.

Q A few years. And when he was working for Desco until October, '74, he was a member of Local 59?

A That's correct.

Q And what brought about your giving approval for him to go into Local 16?

A He called and made the request.

Q He wanted to become a member of Local 16?

A He wanted to become a mechanic.

Q A mechanic. And, did he indicate that the reason he wanted to become a mechanic was because he was doing mechanics' work?

A He didn't indicate that. As I recall, he indicated that, if I recall, he said that he had an opportunity to become a mechanic and he was making this request because when you become a mechanic then you relinquish your membership in the Local 59.

Q But, was the work he was doing, did it qualify him for being a mechanic?

A I would not venture to be the judge of that. That would be up to the Employer.

Q In other words, it's the Employer that determines whether a man is capable of being a mechanic?

A I would say so.

Q And, in this case, had you checked with the Employer, in Glassis' case?

A No, I didn't.

Q Or did Glansis tell you the Employer had agreed?

A When Glassis made the request to be elevated to a mechanic status, I would assume that for his continued employment that he did have that conversation with his Employer and his Employer did grant him the status of apprentice to become a mechanic because they serve an apprenticeship of -- I don't know what it is now, in the bricklayers, whether it's two years.

Q Isn't it the improver level that they go into?

A Sort of an approval apprentice level.

Q So, when Glansis transfers into 16, he first goes in as an improver; is that the apprentice --

A That's generally the case.

Q And then after that he becomes a full-fledged mechanic after a certain number of years. So, really, you were giving your permission for him to go in as a member of 20 as an improver.

A And eventually to become a mechanic.

Q And that's the procedure that's been followed not only at Desco but at other Employers?

A That's generally the procedure with all these cases.

Q And do you know what Glansis was doing prior to your giving him the approval, what kind of work was he doing?

A Prior to whenever I was on the job --

Q Let's say 1974.

A In 1974, I would say that he was doing more of the jurisdictional work it's custom for a helper to do.

Q Well, you say "more", was he doing some work that was jurisdictionally of the bricklayers, terrazzo workers?

A Well, from the periods of time that I seen him, he was doing work most generally done accustomed to the helpers trade.

Q But you say "most generally" so that some of the times you saw him, he was doing work that was within the jurisdiction of the bricklayers.

A I can't recall ever seeing Chris Glansis use a trowel, and I assume you mean that the mechanic status would be a trowel man.

Q Well, not only mechanic but improver status.

A Well, I'm talking about, improver would eventually be a mechanic.

Q But you don't know whether or not he was doing improver work before you ever approved his going into 1C.

A I don't know whether he was doing improver's work prior to that. I couldn't swear to it.

MR. TOCCI: I have no further questions.

JUDGE MILLER: Mr. Smitas, do you have any questions?

MR. SMITAS: Yes. I'm just waiting for them to stop talking. It's rather distracting.

JUDGE MILLER: Mr. Mulkern, your cross fire is distracting Mr. Smitas.

MR. MULKERN: I'm sorry.

MR. SMITAS: Thank you.

Q (By Mr. Smitas) Mr. Lavenberg, you mentioned an arbitration that was held involving members of your organization and certain contractors in the area, is that correct, dealing with the payment of travel benefits?

A We have had such arbitration meetings, yes.

Q With Mr. Cordi?

A Correct.

Q And that was sometime in January nineteen seventy -- when was that?

A I believe it was, if I'm not mistaken, it was in the month of November of '73, if I'm not mistaken.

Q November, 1973?

they had received the correct amount.

Q You don't know whether or not they got more --

A I have no idea whether they got more or they may even have received less for all I know.

Q So, the resolution of this arbitration that we're referring to was that the Arbitration Board had no jurisdiction over Mr. Cordi; is that correct?

A With him not being signatory to a contract, I would say you're correct.

Q And you conceded that fact at that time?

A That's the way the meeting broke up.

Q Now, in November of 1974, how many employees did Desco Vitro-Glaze have in its employ?

A I couldn't venture a guess unless I looked at the records.

Q Did you go out and check the job sites of Desco Vitro-Glaze?

A Occasionally, yes.

Q Did you check all the job sites?

A I don't know what you mean by "all the job sites".

Q Wherever Desco Vitro-Glaze was employing employees, did you go on the job site and check these job sites, check the employees, their wages, their fringes, whether they were members of your Local Union, what type of work they were doing; did you do these functions?

right?

A In January the 24th, I believe.

Q Is the statement I made correct?

A Would you kindly repeat the statement?

Q Yes. You saw Harry Livingston in November and Hamilton came in and filed an application in January.

A He filed the application on his own accord at the time.

Q Right. And that happened after you saw Mr. Livingston.

A That's correct.

Q Now, these employees you referred to, you talked about before, remember I showed you the monthly report savings deposit forms, we had Cupola, Merata, Ali Muhammed, John Segado, Dominick Cupola and Constantino Psarras, you recognize those names, the individuals on the December list?

A Yes, I do. I recognize those names.

Q Those employees were employed by Desco Vitro-Glaze for a considerable period of time, is that correct?

A Outside of Constantine Psarras.

Q Oh, the other four, though.

A The other four have been members for quite a number of years but Constantino Psarras was admitted into the Local 59, I believe, in December, '74 if my memory serves me correct.

Q But the other four --

A Have been members for quite a while.

Q And they've been employees of Desco for quite a while, is

I'm a little bit weary at this point.

JUDGE MILLER: So are we all but it's still the shank of the afternoon so let's get some more work done.

Q (By Mr. Smitas) Have you ever worked for Desco Vitro-Glaze?

A Yes, I have.

Q Now, when you worked for Desco Vitro-Glaze, isn't it true that the mechanics also did grinding and polishing?

A I did not work on that type of a job, Mr. Smitas. I worked on a job. I think I worked for one week and we put a new roof on, on the Troy-Schenectady Road on the nightclub out there. I was only out there for that one particular job and it was only for about a week.

Q Okay. So, you couldn't tell us whether or not the mechanics do the work?

A No. I couldn't form an opinion, on any other type of work other than what we did that week.

Q All right. And that was a roof at the Jamaica Inn?

A Jamaica Inn, that's the one. Right. And they fell off the roof, too.

Q Now, you testified that it was your experience with Desco Vitro-Glaze that they would obtain employees by hiring them directly, is that correct, directly from the street or from some other source other than Local 59?

A I've never questioned, as long as I was Business Agent, where the employees came from. If Mr. Cordi called me and I had men available, fine. If he picked them up himself and they wanted to join the Union at a later date, fine.

Q But Mr. Cordi, from your recollection, always gone out and picked up his own employees, is that correct, to do the work that you claim is your work?

A He's picked up people, yes.

MR. MULKERN: I'd just like to ask the witness to be responsive to the question. Has Mr. Cordi always picked up men?

JUDGE MILLER: That's not necessary for you to -- if you want to object, object.

MR. MULKERN: Okay. I object.

JUDGE MILLER: Overruled. I think it was responsive enough.

Q (By Mr. Saitas) Now, Mr. Lavenberg, on direct examination you referred to an incident where you and Mr. Cordi visited Mr. Hamilton and Mr. Sitirion, John Sitirion, on the South Mall job.

A On January 24th.

Q Pardon?

A On January the 27th, I believe.

Q That's right. January 27th. Now, you first went to Mr. Hamilton, is that correct, and you discussed --

A When I first came on the job I met Mr. Cordi and Mr. King

165d

on March 31st, 1975, you established pickets on the South Mall, is that correct?

A That's correct.

Q And, now, the picketing at the South Mall continued for two weeks. Do you remember the exact day that the picketing was discontinued on the South Mall?

A Yes, I do.

Q What's the date?

A April 11th.

Q Were there pickets on the job site on April the 11th or did the picketing end on April the 10th?

A April the 11th was a Friday and they did picket that Friday.

Q They picketed that day.

A That's correct.

Q The full day?

A Well, I was there at 11:00, 12:00, 1:00 o'clock and they were still there. And Mr. Lombassaro and I had to leave to take care of other affairs. As far as I know, they were still there.

Q I see. How many employees of Desco were working as helpers, were working at this time on the 11th of April?

A Dominick Cupola, Dominick Merata and John Segado, as far as I know.

Q Were working?

A I believe, now, when I appoint a shop steward, that all shops are notified. Now, whether I notified Joe Cordi, I'm not quite sure, I'd have to look.

Q When was this?

A I think I notified a shop steward when he began the Albany Medical Center.

Q Mr. Lavenberg, on March the 31st, 1975, when the helpers went on strike, which of the employees of Desco Vitro-Glaze went out on strike?

A Ali Muhammed, and John Sitiriou and Mike Evangelidis, as far as I know. Constantine Psarras was already on disability at that time, I believe.

Q Okay. And so I understand this correctly, Mr. John Sitiriou was not accepted as a member of Local 39 at that tim is that correct?

A John Sitiriou was not accepted?

Q That's right.

A No, I'm going to disagree with you there, sir.

Q Well, he had filed an application.

A He had filed an application but the application stood status quo until we found out what the outcome is of the hearing. His application is still on file but we're just holding it status quo and so is Dimitrios Evangelidis' application.

Q He's in the same boat.

A The same boat, correct.

Q And Psarras was on disability.

A I think he went on disability in the middle of March, I think.

Q Before this --

A Before the -- I think I so stated.

Q Wasn't it true that John Sitiriou was also disabled prior to the time of the strike?

A If he was, I didn't know about it. It wasn't brought to my attention if he was.

MR. SPITAS. That's it.

JUDGE MILLER: Do you have anything further, Mr. Mulkern?

MR. MULKERN: Just one second. I don't think I have anything. No, I don't have anything further.

JUDGE MILLER. Thank you, Mr. Lavenberg.

(Witness excused.)

MR. MULKERN: General Counsel now calls John Sitiriou.

JOHN SITIRIOU

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Sitiriou, was there a time when you were employed by Desco Vitro-Glaze of Schenectady?

A Yes.

Q And when did you start working there?

A I started work the second week of January.

Q What year?

A '75.

Q And how did you happen to come by the job?

A Well, I used to work for an electrical contractor who belonged to this Local and then I got laid off and a week later I find Constantine Psarras and ask him if he knows any jobs and he told me there was an opening at Desco Vitro-Glaze for a helper and he would find out and let me k

Q So, what happened then?

A Then I went down and I got the job at the South Hall Mental Health Lab.

Q And did Mr. Psarras bring you down?

A Yes, he did.

Q And who did he introduce you to?

A Kenny King.

Q And what did Mr. King tell you?

A He told Mr. Psarras to show me around, what I have to do.

Q Okay. So who then showed you what to do, what jobs to perform?

A Mr. Psarras.

Q So, what job duties did you perform?

A Well, for a month or so I was delivering up material.

Q And what, exactly, did that involve?

A Well, I had to deliver bags and put them like a horse. Delivering materials from the basement to a lot of the different floors.

Q So, after that first month, what work did you perform then?

A I got promoted. Mixing. I was mixing material.

Q And what did you do as well as mixing materials?

A Deliver them to the mechanics.

Q And any other type of work did you do?

A No, that was it.

Q Okay. Now, did you assist the mechanics?

A I don't understand.

Q Who actually did the installation of the products?

A The mechanics.

Q And, up to this time, up to the time of February of 1975, did you ever do any installation?

A I don't know how.

Q You don't know how. Now, at a later time, did you, in fact, do some installation?

A Yes, I did. Once.

Q Okay. And what project were you on at that time?

A Sunnyview Hospital.

Q And were you also doing the mixing?

A Yes.

Q But you happened to do some --

A Yes. Well, the mechanic needed a helper and there were two guys on the job that day. It was the first time I got a trowel of my own.

Q And he asked you to use the trowel?

A Yes, to help him out.

Q Now, how long did you work at the Mental Health Building job site?

A I worked there from the second week in January and then I got hurt. I worked there continuous for a month and a half and then I was on disability for a month and then I went back.

Q Okay. Fine.

A And then to different jobs. I stayed there for a week or so and I came back, Glens Falls and Schenectady.

Q And after you came back from compensation -- now, my understanding is that when you came back from compensation, this would have been after the strike was over.

A Yes.

Q After the picketing was over.

A Right.

Q Not after the strike was over. But, when you came back from compensation, what work did you do for the most part?

A Grinding -- mostly light jobs, sweeping and grinding, vacuuming.

Q And why did they have you doing light jobs?

A Because of the injury.

Q Because of the injury, okay. Now, when you were hired, were you told anything about what wage rate you'd be receiving?

A Yes.

Q Who told you that?

A Kenny King. Eight dollars and some cents.

Q Okay. Now, do you know what day is payday at Desco?

A Thursday.

Q Thursday. And directing your attention to the first payday after you were employed, did you, in fact, get the same wage rate as Psarras?

A No, I didn't. Seventy-five cents less.

Q And, did you, in fact, receive less than seventy-five cents less that first payday?

A Yes.

Q And did you have a conversation with Kenny King about --

A Yes. He told me it was seventy-five cents for six months for training as a helper.

Q As a helper?

A Yes. For six months, seventy-five cents per hour.

Q They would withhold seventy-five cents per hour?

A Yes.

Q And did he say where this provision --

A It was in the Union books.

Q It was in the Union book. Okay. Now, when did you first hear of Local 59?

A When I first started working there.

Q And who first told you about it?

A Constantine Psarras.

Q And what did Mr. Psarras tell you about Local 59?

A Well, it's a good Local.

MR. SMITAS: I'm going to object. You know, what's this got to do with anything?

JUDGE MILLER: I think it's hearsay.

MR. MULKERN: Okay. Fine. The only reason I'm going into this question at all is because there seems to be an allegation that Mr. Sitiriou was forced to join Local 59.

JUDGE MILLER: We have no charge against Local 59.

Q (By Mr. Mulkern) Now, directing your attention to January 24th, 1975, did you meet David Lavenberg?

A Yes, I did.

Q And where did you meet him?

A On the second floor.

Q Of what building?

A Mental Lab.

Q And about what time was it when you met him?

A Noontime.

Q And what happened?

A Constantine Psarras saw him and he took me with him and introduced me to David and I filled out an application. Nobody forced me to. I did it of my own free will.

Q Did he ask you if you wanted to sign out an application or did you ask him?

A No, I already asked him the second day that I was there. Tino Pearras took me downstairs and Mr. Frank --

Q Glogowski?

A Yes. President and he didn't have no applications with him and he took my name and telephone number and everything and he said he would contact Frank and would come up with an application.

Q So, anyway, on this day --

A On that day I filled out the application and I asked him how much was the initiation fee and he told me four hundred dollars and I gave it to him -- I said "How much can I give you now"? He said, "Whatever you got". So I had a hundred dollars and I signed out the application and that was it. He told me I was working for Local 58 and I went back to my lunch.

Q Now, I show you what's been marked for identification as General Counsel's Exhibit 4 and ask you if that is the application that you made out that day.

A Yes.

Q Directing your attention to about an hour later, did you have a conversation with Kenny King?

A Yes, I did.

Q And who is Kenny King?

A He was the foreman on the job.

Q Okay. And what did he say to you and what did you say to him?

A I approached him and said I had joined Local 53 today and he told me that I didn't have to for a couple of weeks which he knew I needed the money, I was laid off, I could have waited a couple of weeks. I said "What's the difference? I would have joined not matter what. Sooner or later I had to join somewhere."

Q Now, directing your attention to on or about Monday, January 27th, 1975, did you have a conversation with Joe Cordi, Kenny King -- and Kenny King?

A Yes, I did.

Q And, about what time was that?

A 10:00 to 10:30, something like that.

Q Okay. And where did this conversation take place?

A I believe it was on the second floor.

Q Okay. And what did they say to you and what did you say to them?

A Mr. Joe Cordi asked me if I had joined Local 53 and I told him yes, I did. They didn't say much and then they left.

Q That's about all? Okay. And had you ever seen Cordi before?

A No, this was the first time.

Q And did he ask you anything about whether you had been forced to join Local 59 or anything like that?

A No.

Q He didn't say anything about asking you whether you had been forced or coerced or anything like that?

A No.

Q Had Mr. King ever asked you if you had been forced or coerced or anything like that?

A No.

Q Now, directing you attention to about 2:00 o'clock that same day, did you have a conversation with King, Cordi and this time, Lavenberg?

A Yes.

Q And what did they say to you and what did you say to them?

A Well, it was on the first floor. I was bringing up material, me and Mike Evangelidis and Joe Cordi called me. David Lavenberg was there and Kenny King. And they told me about joining Local 59 and I told them yes. They says, "Do you want your money back?" I say, "How can I answer that? I only had a week there working. I needed the job." He said, "Are you with them or with me?" I said, "Of course I'm with you, you're my boss, you know, you pay me." He said, "Do you want your money back?" I said, "Yes, I do". And Joe Cordi told David, he said, "You heard the man". So, David signed out a check for a hundred dollars and I took it and I went back to work.

Q Okay. Now, directing your attention to on or about January 29th, 1975, were you -- did you have a conversation with Kenny King?

A Yes.

MR. SWITAS: Excuse me. What date was that?

MR. MULHERN: January 29th.

Q (By Mr. Mulhern) And where did this conversation take place?

A I was in the room vacuuming. Second floor.

Q Okay. And was anyone else present?

A No.

Q And what did King say to you and what did you say to him?

A He says, "The President of Local 10 is coming down in a day or two and we're going to join Local 10 Masons." He says, "It's better for you and we'll get better money." I needed the job so I had to. I had to do something so I said "Okay".

Q And did he say anything about money?

A Yes. We'll get more money than you're getting now which I got an increase.

Q But did he say anything about your bringing money?

A Yes. He says, you should put a deposit when he comes for an application.

Q Okay. Now, before you had this conversation with Kenny

King, had you ever asked him or anybody else if you could become a mechanic?

A No.

Q As a matter of fact, can you do mechanics' work?

A I can't do nothing that I don't know. How can I do it?

Q And prior to that conversation with King, had you ever had any discussions with anybody about joining any other Union at Desco besides Local 59?

A No.

Q Okay. Now, directing your attention to on or about January 31st, 1975, were you approached by John Segado?

A Yes.

Q And did you have a conversation with Mr. Segado?

A Yes.

MR. SMITAS: I'm going to object.

MR. MULKERN: Once again, I'm just asking if he had a conversation.

JUDGE MILLER: All right.

THE WITNESS: He just called me. No conversation. John Segado just called me which he was the foreman on the job.

MR. SMITAS: Well, wait a minute. Anything further --

JUDGE MILLER: The fact of the conversation I will allow. What was said, I will not.

Q (By Mr. Mulkern) And, pursuant to that conversation, did you go to the job site office?

A Yes, I have.

Q And when you got to the job site office, who was there?

A Mr. Joe Cordi, Kenny King and the President of Local 16.

Q And who is that?

A Riggi.

Q Vince Riggi?

A Vince Riggi.

Q And were there any other employees that went with you?

A Yes. Mike Evangelidis, there was Dominick, there was John Segado, Constantine Psarras, about four or five guys.

Q Okay. And what did Mr. Cordi and Mr. Riggi say --

MR. SPITAS: I object to the form of the question. He's combining two men in one question, what did they say. Could it be singly --

MR. MULKERN: Well, conversations, when there are more than three people speaking, obviously take place at -- do you want me say that --

JUDGE MILLER: Let's find out who said what.

THE WITNESS: Mr. Riggi called my name.

MR. MULKERN: I would surely ask that the witness identify who makes a particular statement.

JUDGE MILLER: Wait a minute. Let's stop and start over again on this question. Ask your question again, please.

Q (By Mr. Mulkern) Now, what did Mr. Cordi and Mr. Riggi say to the employees and what did the various employees say to each of these and when I say Mr. Cordi and Mr. Riggi, I mean what did Mr. Cordi say and what did Mr. Riggi say and what did individual employees say?

A He says, "This is Vince Riggi from Local 16" and he called my name, Riggi called my name, John Sitiriou and I respond. We shake hands with the guy. He says, "You got any money?" As a matter of fact, I didn't have no money so I borrowed fifty bucks, fifty dollars from Mr. Cordi. I give it back to him the next day. He gave me a receipt and then the rest of the guys, they pay, which it was lunch time and I went out and had my lunch.

Q And this receipt that he gave you, did he make it out there or was it already made out?

A No, he made it right there, yes.

Q I mean, did he make it out there, did he fill it in there?

A Yes.

Q Did Mr. Riggi or Mr. Cordi say anything else?

A Yes. He said he would be back next week for the rest.

Q The rest of the money?

A The rest of the money.

Q Okay. And, did you -- do you remember anything else about the other employees, conversations that they had with either Riggi or Cordi?

A No. I didn't pay attention.

Q Now, directing your attention to about a week later, did you have another conversation with Mr. Riggi?

A Yes, I did. The same place.

Q The job site office?

A Yes.

Q How did you happen to get to the job site office?

A Through John Segado again.

Q Okay. And who was present this time in the job site office?

A The same people. Joe Cordi was there. Kenny King.

Q Okay. And what did Mr. Riggi and Mr. Cordi say this time?

A If we had the money.

Q Who said it?

A Mr. Riggi.

Q Mr. Riggi asked you if you had the money?

A If I had the money. So, I still hadn't cashed my check, so I said, "Can I make arrangements" -- it was on a Friday. I said, "Not this Monday, following Monday, I can make arrangements, because I needed the money and I can stop by your office and pay the whole amount", which he agreed. And me and another friend of mine, Mike Evangelidis, we went down, we make the arrangements.

Q Did Evangelidis say anything about that, about paying the next Monday?

A Yeah, he said the same thing.

Q And, do you remember anything that Constantine Psarras said or anything that was said to him?

A No, not personally. I just remember Mike Evangelidis, he didn't have the money so he made the arrangements and we went down to his office, the following Monday.

Q Directing your attention to that Monday, the second Monday from the above meeting, did you, in fact, go down to the Local 16 office?

A Yes, we did. 7:00 o'clock in the morning we were there.

Q And who went there? You and who else?

A Me and Mike Evangelidis.

Q And was anybody else in the car?

A Constantine Psarras, yes. He was driving that day, so he waited in the car downstairs.

Q And what did you and Evangelidis do?

A We went upstairs to pay the money. The only thing, we still didn't have the money. We only had twenty dollars and we pulled the money to pay him for a deposit and Vince Riggi come out and says, "You better hold your money, some kind of confusion in the whole thing and we will let you know". So we just put the money back in our pocket and said "good-bye" and we left. We never heard ever since.

Q Okay. Now, did your pay rate change after you joined Local 16?

A Yes.

Q How did it change?

A I was getting seven eighty-nine so I got about eighty cents more an hour from the helpers and also the welfare fund when I was in Local 59, when I started, there was nothing taken out. When I joined Local 16 it was taken out.

Q They took out pension and welfare?

A Yes.

Q And how about savings? Did you receive any stamps?

A No. After I joined Local 16 I believe I didn't. I can't remember now, a year and a half. I can prove that. It's no problem. I can see my pay stubs.

Q Now, did your job duties change at any time while you were working at Desco?

A They remained the same.

Q And, did there come a time following the strike that Local 59 engaged in, did there come a time when you returned to work at Desco?

A After the strike, yes.

Q Okay. And how long did you work there at that time?

A At the South Mall project?

Q Altogether, how long did you work at Desco after you returned from your disability?

A Not very long because then I have a problem with my back again.

Q Right. And then what happened after you had the problem with your back?

A I went out and I was never called in for work. As a matter of fact, I received my check two days later with a layoff slip. I got hurt on a Monday or on a Tuesday, Thursday I got my check from Chris Glassis and I opened it up and I was surprised at the pink slip.

Q So, when you got your paycheck that week, in addition to your paycheck there was a layoff slip in the envelope?

A Yes.

MR. MULKERN: I have no further questions.

MR. TOCCI: May I proceed?

JUDGE MILLER: Yes.

CROSS EXAMINATION

Q (By Mr. Tocci) Mr. Sitiriou, you were hired in January of '75?

A Yes.

Q And then you mentioned that you had a meeting on the job site where Mr. Riggi was there and Mr. Cordi and some other people.

A Yes.

Q Did Mr. Riggi ask you if you wanted to join Local 16?

A I had to join somewhere.

Q I mean, did he ask you if you wanted to join Local 16?

A Yes.

Q And what did you say?

A I had to join somewhere so I might as well join Local 16. I needed the job.

Q Right. And did anybody force you to join Local 16?

A I don't think anybody would have beat me up, no.

Q In fact, at the prior hearing, you said "Nobody really stuck a knife in my throat,' right? Isn't that your words?

A Is that my words?

Q Yes.

A Okay.

Q They asked you if you wanted to join and you said "okay". Is that correct?

A Yes.

Q And you gave them a fifty dollar deposit on your membership?

A Yes.

Q Now, after that fifty dollars, you never paid any more money to Mr. Riggi?

A No. I went down to --

Q No, I understand. You went down. And did Mr. Riggi, after that, ever ask you to pay monthly dues?

A He came up the week following --

Q A week later and you told him you couldn't.

A Right.

Q And then after that second visit, did he ever come to you and ask you --

A I went to his office to give him the twenty dollars, okay? And he told me there was some confusion. I never saw the guy again.

Q Okay. And he never called you on the phone either?

A No.

Q He never sent you a letter --

A No.

Q -- about paying dues?

A Nothing.

Q About paying initiation fees?

A Nothing.

Q Now, while you were -- you made an application in February of '75 to Local 59.

A Yes, I did.

Q And did you give a downpayment with that application?

A Yes, I did. A hundred dollars.

Q And, is that application still into that Local?

A I believe so.

Q And is that initiation fee still there, that hundred dollars?

A No.

Q They gave it back to you?

A Yes. I got it back the day that David write me the chec

Q I know but then you made another application. Aren't y the gentleman that made a second application?

A No.

Q On February 10th, 1975? After he gave you the check back on the job, didn't you make another application on February 10th, 1975?

A Oh, yes. Yes. Excuse me.

Q At that time you were working at Desco.

A Right.

Q And did you give him an initiation fee?

A No, I didn't.

Q No money at all?

A I didn't have any money.

Q I mean, since then, you've never given them any money?

A No. Ever since I've been in bad shape.

Q I see. Okay. And you never paid any monthly dues to Local 59?

A No.

Q You were never initiated into 59, you were never sworn in as a member?

A Well, I went to the meetings.

Q Oh, you did go to the meetings?

A Yes.

Q But you never paid any dues?

A No, which I appreciate that, that I didn't have the money.

Q I understand that. I'm just trying to clarify whether you ever paid any dues.

Q But, did he do it himself too?

A Eh?

Q Did he do it himself too?

A Yes. Well, if the guy doesn't have nothing else to do, he's got to help. If somebody is paying him nine dollars an hour, he's got to do something.

Q Right. I agree with you but he did help, right?

A Yes. He pitched in once in a while.

Q So, he did everything that you did.

A Not really, no. He never mixed.

Q Then you were mixing and he was installing, right?

A Yes.

Q So, you were helping him.

A Yes.

Q And then on occasions he'd help you, right?

A Yes.

Q So, you worked hand in hand, right?

A Yes.

Q And that went on for a month?

MR. MULKERN: I think he said three weeks.

THE WITNESS: Well, I don't know, three weeks, a month.

Q (By Mr. Soitas) Did you work on any other job?

A Yes. I worked on the Glens Falls Hospital.

Q Who were you working for there?

A Who I was working for?

Q I mean, mechanics.

A Oh, yeah, there were quite a few guys. I don't remember their names. Chris Glassis was there. Dominick Cupola.

Q Were there a lot of mechanics there?

A Yes.

Q How many?

A I don't know, on the job. I would say, five, six guys.

Q Did everybody pitch in on the job?

A Not really. If you tell a mechanic to carry a bucket with a mix, they won't do it. They won't even dump the mix, you know, if you're tired or something, smoking a cigarette, they won't touch it until you put it on the floor.

Q What kind of a job was that?

A It was a terrazzo.

Q Terrazzo job?

A Yes.

Q Did they mix the terrazzo, the mechanics?

A No. We did. I did.

Q He put the terrazzo down?

A Yes.

Q What kind of terrazzo was it?

A I'm not that familiar with it.

Q Did you polish the terrazzo?

A No, I wasn't there one day, polishing.

Q You weren't there?

Q Now, how about when you were working at the Glens Falls Hospital, did you do any installation there?

A No.

Q You didn't do any installation there?

A Just mixing.

Q Just mixing. Anything else?

A Wheelbarrow to the mechanics in each room where we were working.

Q Now, another thing that I just want to make clear, it came out on your direct testimony that you told Kenny King that you had just joined Local 59. And then the following morning, King and Cordi came up to you and did you --

MR. SMITAS: Wait a minute. He starts 'did you", I want to be sure, Mr. Examiner, because this is a direct allegation of the Complaint, I want to make sure that this witness is not going to be led at this point.

JUDGE MILLER: Let's not lead the witness.

MR. MULKERN: Fine. There's no problem. When Cordi and King came up to you that morning, what, exactly, was said?

THE WITNESS: I told them that I joined the Local 59 and I said, "Why, did I did something wrong?"

MR. MULKERN: Okay. Well, did you --

THE WITNESS: They said "no".

MR. MULKERN: Fine but did you just say "I joined Local 59'or did " --

A King and Mr. Cordi was right there, too and I said "Why, did I did something" -- I didn't even know that that was my boss.

Q Right.

A I didn't know that Mr. Cordi was my boss. I guess when somebody starts working, the foreman will introduce and say, this is your boss, Joe Cordi. They just came up and asked me.

Q But, in any event, when they came up to you, who spoke first?

A Kenny King.

Q And what did he say?

A "Did you join Local 59?" I said, "Yeah. I gave them a hundred dollars deposit." I said, "Why, did I did something wrong"and both of them said, "No, that's okay." And they left. That was it.

Q But, Kenny King asked you if you joined the Local?

A Um-hm. In front of Joe Cordi.

Q Just one more point. During the two weeks that there was picketing at the Mall, did you go to the picketing at any time?

A I went a couple of times. I didn't picket though. It was conversation. I had my brace on.

Q You had your brace on.

A I just took a ride over.

Q But you stood by the pickets?

A Yes. I talked to the guys. All was on and a couple of

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the matter of.

DESCO VITRO-GLAZE OF SCHENECTADY, INC.
-and-
LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO.
LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE & TERRAZZO WORKERS INTERNAT'L UNION, AFL-CIO,

Case No. 3-CA-5993

-and-
LOCAL 59, INTERNAT'L ASSOC. OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO,

Case No. 3-CB-2498-1

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS, MARBLE & TILE & TERRAZZO WORKERS INTERNAT'L UNION, AFL-CIO,
-and-
LOCAL 59, INTERNAT'L ASSOC. OF MARBLE, SLATE & STONE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS, MARBLE MOSAIC & TERRAZZO WORKERS HELPERS, AFL-CIO.

Case No. 3-CB-2498-2

Hearing Room
National Labor Relations Board.
Leo W. O'Brien Federal Bldg.
Clinton and North Pearl St.
Albany, New York
Thursday, August 5, 1976

The above-entitled matter came on for hearing pursuant to Notice at 9:45 a.m.

BEFORE:

HONORABLE MICHAEL O. MILLER, Administrative Law Ju

4

364

187

APPEARANCES:

PAUL V. MULHERN, JR., ESQ.,	National Labor Relations Board, Leo W. O'Brien Federal Bldg. cor. of Clinton Ave. & N. Pearl Albany, N. Y. 12207 appearing as Counsel for the General Counsel.
DANIEL J. SMIRAS, ESQ.,	56 Fuller Road Albany, New York 12203 appearing on behalf of the Employer.
DOMINICK TOCCI, ESQ.,	112 State Street Albany, New York, 12208 appearing on behalf of the Respondent Unions.

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INDEX

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Allie Mohamad	366	387	420	-	
Joseph Rombassaro	429	-	-	-	
David Lavenberg (Recalled)	-	-	466	469	467
Joseph Cordi	490	579	-	-	

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's		
GC-19	374	--
GC-20	430	431
GC-21	469	469

- - - - - - -

Union's		
2	462	462
EMPLOYER'S		
1	497	497
2	494	494

PROCEEDINGS

9:00 a.m.

JUDGE MILLER: On the record.

MR. MULKERN: General Counsel calls Allie Mohamad.

Whereupon,

ALLIE MOHAMAD

was called as a witness by and on behalf of the General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mulkern) Now, Mr. Mohamad, was there a time when you were employed by Desco Vitro-Glaze of Schenectady

A Yes.

Q When did you work there?

A When?

Q Well, how long did you work there?

A Off and on, I'd say twelve years.

Q Was there any period when you worked fairly steadily for Desco Vitro-Glaze?

A Yes, in the last four, five or six years I worked pretty steady.

Q When was the last time you worked at Desco Vitro-Glaze?

A Well, it was more than a year ago, I think.

Q Now, are you a member of any labor organization?

2

A I'm a member of Local 59, the Tile, Marble and Terrazzo Helpers.

JUDGE MILLER: Could you speak up just a little louder please?

THE WITNESS: I'm a member of Local 59, the Tile, Marble and Terrazzo Helpers.

Q (By Mr. Mulkern) When you were working at Desco Vitro Glaze, what were you employed as?

A As a helper.

Q As such, what were your job duties?

A I would load trucks, distribute material, grind terrazzo floors, and mix the material. The latex, I would mix that material and bring it to the masons and they would put it down. Sanding.

Q Who did you assist in all of the work?

A I assisted the masons.

Q Now, did you ever do work within the masons jurisdicion?

A Yes --

MR. SMITAS: I'm going to object to that. I'm not sure that --

JUDGE MILLER: That's a little broad, define it.

Q (By Mr. Mulkern) Okay, what type of work did the masons and the mechanics perform?

A They installed the floors.

3

Q Did you ever do any installation?

A Yes.

Q What percentage of your actual time was spent, when you were working for Desco, over the past four or five years, was spent doing this type of installation?

A Well, sometimes I did install floors but I would say only about five percent of the time. Ninety percent of the time I worked as a helper. That's what I was getting paid, as a helper.

Q Now, during all the time you worked at Desco, up to around the last week in January, or the first week in February of 1975, what pay rate did you receive?

A I believe I received $8.38 an hour.

Q Is that the rate you were receiving at or in January of 1975?

A Yes.

Q Where did this pay rate of $8.38 an hour come from?

A Well, it was the pay rate that -- it was the helper's pay-- what the union had an agreement with the Contractor's Association. That was my wage. It was established there.

Q As well as wages, did you receive any other benefits when you were working for Desco, prior to February of 1975?

A There was a savings plan. The money was taken out of my pay and mailed to Fidelity Bank in Latham. Then we had a pension plan that was paid to the pension fund.

Q This savings fund, whose savings fund was it?

A The helper's savings fund. The Local 59.

Q How about if you were working out of town, did you receive any type of allowance for that?

A Yes, we received expense money if it was way out of town. I think it was twelve dollars a day expense money.

Q Did you receive the expense allowance, which was found in the Local 59 contract with the Contractor's Association?

MR. TOCCI: I object to the form of the question. I don't think it's been established that he read the contract.

JUDGE MILLER: Sustained.

Q (By Mr. Mulhern) I show you what has been marked for identification and entered into evidence as General Counsel's Exhibit 11, and direct your attention to Article 3 of that contract, which is headed "Expense Allowance." I ask you to look that over.

(Witness examines document.)

A I would say yes.

Q Yes, that you did receive the expense allowance outlined in that paragraph?

A Yes.

Q Now, Mr. Mohamad, how about coffee breaks? Did you receive a ten minute coffee break when you were working for Desco Vitro-Glaze?

A Yes.

A Yes, I believe when I was at Albany Medical Center, there was a retroactive pay given to me there. I kept working and then Local 59 was negotiating with the Contractor's Association and we kept working. Then, when all that back money...they gave it to me there.

Q Now, directing your attention to on or about January 29, 1975, did you have a conversation with Kenneth King?

A Yes.

Q About what time was it that you had this conversation?

A I believe it was in the morning, sometime.

Q What did Mr. King say to you and what did you say to Mr. King?

A Kenneth King asked me if I wanted to become a mason.

Q And, what did you say to him?

A I asked him when. He told me soon and I asked him what I would be doing. He said the same thing I am doing now and he went away and he came back later on and he says, " Aldo Malassi will be here tomorrow and you can join up."

Q Who is Aldo Malassi?

A He was the Business Agent for Local 6.

Q Okay. Now, directing your attention to the following day, January 30th, 1975, did you have another conversation with Kenny King?

A Kenny King came to me and he said, "Aldo's here and I could sign up."

8

Q Okay, so —

MR. TOCCI: Your Honor, I would like to object to these as relates to whether they should be binding on Local 6 and 16, any conversations with Mr. King.

JUDGE MILLER: I appreciate that fact.

MR. TOCCI: Okay.

JUDGE MILLER: I will overrule the objection. The testimony is valid as far as it pertains to the Respondent Employer.

MR. TOCCI: Thank you.

Q (By Mr. Mulkern) Okay, so, what did you do after Kenny King approached you?

A Well, we went down to the office on the job.

Q And, who was there in the office when you got there?

A Aldo Malussi was there. Kenny King was there. Joe Cordi was there and me.

Q What was said there? Who said what? What conversation took place?

A Well, I asked Joe Cordi that if I was going to be an apprentice, because I worked all those years as a helper and I figured I didn't want to start as an apprentice. That's why I asked him that and he said that no, I would start as a top man or a journeyman. I wouldn't be an apprentice, I would be a mason.

Q So, then what happened?

A Then I had a check from Desco cause I didn't have any money in my pay. I gave Aldo the check. I gave him $133.00. He took that out of there and he gave me the change and he gave me a receipt. I believe we shook hands and I left.

Q I show you what has marked for identification as General Counsel's Exhibit 19, and ask you, is that the receipt you received from Mr. Malassi?

(Whereupon, the aforementioned document was marked as General Counsel's Exhibit 19, for the purpose of identification.)

A Yes.

Q Now, do you recall how much money you gave Mr. Malassi that day?

A $133.00.

Q $133.00. Now, directing your attention to on or about February 7, 1975, did you attend a Local 6 meeting?

A What was the date, again?

Q On or about February 7th.

A Yes, I did.

Q Where was this meeting held?

A At the Labor Temple.

Q Who was there for Local 6?

A Well, I believe Aldo was there and Dominick Spano, I don't know if he was -- what he was with the Union. I think the treasurer or something.

Q Does Dominick Spano hold an office with the union right now?

A Yes, he's the Business Agent for Local 6 now.

Q Did you have a conversation with someone that evening?

A Yes, I was talking to, you know, most of the men there, Aldo and a few others, and somehow I had the decision when I left there that I didn't join the mason union, I was joining the chemical's union, the chemical mason's union.

Q Who told you this?

A I really don't remember which one told me, but I came to that--you know, I can't remember which person told me that.

Q Had you ever heard of the chemical worker's branch of the mason's union before?

A No.

Q Now, did there come a time when you told Local 59 Business Agent Lavenberg that you had joined Local 6?

A Yes, at one time down at the health lab, I did tell Davey I joined Local 6.

Q Okay, now, directing your attention to on or about Wednesday, February 12th, 1975, did you go back to the Local 6 Hall, again?

A Yes, I did.

Q And, was anyone with you?

A Dave Lavenberg.

Q Did you speak to Local 6 officials?

A Yes, I did.

Q Who?

A Dominick Spano was there and the other gentleman, I really don't know his name.

Q Okay. What did you say to them and what did they say to you?

A Well, I was discussing with them that I wanted to get my money back and I didn't want to stay in that union anymore. Somehow, I believe somebody told me that Aldo was sick and so I didn't want to push on anybody or anything cause Aldo's not there. There was no decision made that I would come back at a later time.

Q Okay. Now, directing your attention to the summer of 1974, did you have a conversation with Aldo Malassi about becoming a mason?

A What was that again?

Q Summer of 1974?

A Yes, I did.

Q What was your employment status at this time?

A I was a helper.

Q Yes, but, were you employed or on lay-off?

A I was laid off.

Q When you asked Malassi this, what did he reply?

A Well, it was at the Agency Building, there, at the

13

A Yes.

Q Now, after you joined Local 6, did your wage rate change?

A Yes, I received more money.

Q Do you recall what you received at that time?

A I believe $3.73.

Q $3.73?

A Yes.

Q And, was there any other difference in benefits that you received after you joined Local 6?

A I received stamps, savings stamps and if I worked so many hours, as I understood it, there would be a medical insurance.

Q Did you receive these stamps before?

A No.

Q But after you joined Local 6, did your job duties change?

A No.

Q You said before that you spent approximately 90% to 95% of your time doing what you called helper's work, over the last four or five years. After February 6th, did you continue to spend 90 or 95% of your time doing helper's work?

A Yes.

Q You did?

A Yes, I did helper's work, even when I joined Local 6.

I was still doing helper's work.

Q Now, directing your attention to the middle of February, 1975, did there come a time when Gerald Bombassaro came to the job site?

A Yes.

Q Who is Gerald Bombassaro?

A International Representative for Local 59.

Q For the helper's union?

A Helper's union, yes.

Q Was anyone with him?

A Dave Lavenberg.

Q Did they speak with you?

A Yes.

Q Did there then come a time when Joe Cordi got involved in the conversation?

A Yes.

Q Did you hear the conversation between Bombassaro and Cordi and Lavenberg?

A Yes, for a while I was there.

Q What do you recall being said in that conversation?

A Well, Gerry and Joe were talking. Joe Cordi was telling Gerry that he didn't need the helpers to do the work. He wanted the masons to do the work or something. He asked me what I thought of Local 59. What did they ever do for me and what I thought of them. I didn't answer that question.

Q Did Bombassaro say anything?

A Jerry Bombassaro asked Joe Cordi if he would lay me off or fire me if I didn't join Local 6. Joe didn't answer him right away. Kenny King stepped in and he said "it was hard to say" and then Joe said "it was hard to say."

Q Now, are you familiar with an employee of Desco named Chris Glantzis?

A Yes.

Q Up until around the end of 1974, what was his job?

A Chris was a helper.

Q What union did he belong to?

A Local 59.

Q What work did he do at that time?

A He did helper work.

Q Did there come a time, near the end of 1974, when his job changed?

A Yes, he joined the mason union and became a mechanic.

Q What union did he belong to after he became a mechanic?

A The mason's, I believe it was in Schenectady. I don't know.

Q Did his job duties change after he became a mechanic?

A Yes, he started installing floors then.

Q Did he do helper's work after he became a mechanic?

A Most of his work was putting floors down. Once in a while, maybe he did do helper's work.

16

Q But his duties clearly changed after he joined the mason's union?

A Oh, yes.

Q Now, directing your attention to on or about March 31, 1975, what if anything occurred on the job site that day?

A Went on strike against Desco.

Q Were there pickets?

A Yes.

Q Didyou picket?

A Yes.

Q Who went on strike against Desco?

A Local 59, the helper's union.

Q Were there picketers besides yourself?

A Oh, yes, more than one picket.

Q Did Desco have a job at that job site?

A Yes, at the health lab.

Q Now, how long did the picketing last?

A Two or three weeks.

Q After the picketing ended, did you go right back to work for Desco?

A No.

Q Did you remain on strike after picketing for a period of time?

A Yes.

Q Then did there come a time when you went back to work for Desco?

A Yes, there was a time I went back to work for Desco.

Q When was that?

A I really don't remember when. Maybe it was in May or something. I really don't remember.

Q Now, when you returned to work at Desco around May, what kind of work did you do from that time until the time you were laid off?

A Well, I did helper's work, but, I just can't remember where I was.

Q As best you can recall, what type of helper's work were you doing? This is from May until you were laid off.

A Well, the same thing I'd been doing all the other year. I'd mix stuff, grind, sand, carry material, load the trucks.

Q When you went back to work, did you observe John Segatto working for Desco?

A Yes.

Q What work was he doing when you got back to work after the strike?

A He was doing helper's work.

Q Do you recall where you saw him working?

A He was down at the South Mall and Glens Falls, I think --

Q Speak up, if you can.

A A few days, I believe, down in Schenectady at the Sunnyview -- you know, if I had my jobs and where they were. I'm not sure at which job because I go around.

Q Sure. How about when you went back? Did you observe J. C. Hamilton working for Desco?

A Yes, he was at the South Mall.

Q What type of work was he doing?

A Most of the time he was on the mixer, mixing; helper's work, mixing the material.

Q What other work did he do besides mixing?

A He wheeled the material to the masons sometimes.

Q How about before February, before that first week in February, 1975, when Aldo Malassi came on the job site, and you met him and Cordi at the job site office? Before that, what type of work was John Segatto doing?

MR. SMITAS: I'll object unless we identify a particular time and place, or location that this observation was made.

JUDGE MILLER: Can you narrow it down, some?

MR. MULKERN: I will as best I can. It is difficult, Judge.

Q (By Mr. Mulkern) Let's say in the six months before--

MR. SMITAS: I'm talking about, you know, there is such a generalization. That is what I am objecting to, unless he can -- unless the witness can testify that he worked with

19

this man on a continuous basis, then, I want to establish or I would like the Hearing Officer to establish, when he worked for him, what jobs he worked, etc. Unless I challenge this, then it's going to be accepted that he worked with him for all times.

JUDGE MILLER: No, not necessarily. To the extent of this witness' observation, whatever he saw Mr. Segatto do, noting particularly, following your objection, that the observation was perhaps, not continuous. Find out how often he worked with him, where, if he can remember, and what he saw him do.

Q (By Mr. Mulkern) Let's say in the six months prior to February of 1975, how often did you work with John Segatto?

A Well, before --

Q Before Aldo Malassi came in.

A Before Aldo Malassi came on the job, I was working with John Segatto at the health lab.

Q Okay, and how long had you been working there with him?

A Two, three months I'd say.

Q In that two or three month period, what type of work had John Segatto been performing?

A Well, when Kenneth King was not there, John was like an acting foreman.

Q Over who?

A Over all the helpers.

Q Okay, and what type of work did he do?

A Well, he has helped me unload the trucks and the materials, and he has helped me bring the --distribute it, bring it over there like stock pile. He was doing helper's work.

Q Did he do installation work?

A Sometimes, not all the time.

Q How often would he do installation work?

A Oh, very little.

Q What percentage of his time, would you say, was spent doing insatllation work?

A Well, not very much, like say if we worked a week, maybe half a day or a day.

Q How about J. C. Hamilton? Had you worked with him prior to Aldo Malassi coming on the job site?

A Yes, Hamilton was on the mixer. He was mixing the neotex (phonetic).

Q Is that all he did, just mix?

A Sometimes he would wheel the material, too.

Q Did he do installation work?

A No.

MR. MULKERN: Excuse me, I would appreciate it if the Counselor's would —

JUDGE MILLER: All right, it is a small room and

Q So you left Desco Vitro-Glaze and went to work for another company?

A Right.

Q Why did you quite work for Desco Vitro-Glaze?

A We were on strike.

Q Did I ask whether or not you quit working for Desco Vitro-Glaze?

A Yes.

Q Okay. Now, over the years -- you started quite a few years ago with Desco Vitro-Glaze working for this company, that's correct, right?

A Yeah.

Q Now, over these 12 or 15 years that you worked for Desco Vitro-Glaze did you notice a time when the type of work that you performed changed? Did you notice a change in the type of work you were doing as the years went by?

A In the work I was doing?

Q Yeah. Using different materials?

A Well, the materials, yeah, they did change a little.

Q All right. You went from installing Terrazzo floors to installing chemical products?

A Yes.

Q And more in your observations in the jobs that you were on isn't it true that after Mr. Cordi took over the operations of Desco Vitro-Glaze that you didn't do any terrazzo work that you know of?

A What's this?

Q After Joe Cordi took over didn't you do more chemical products, installation? As a matter of fact, you did that exclusively at that point, from that point on? After Joe Cordi took over, right?

A Right.

Q Isn't it true that the type of work that you install on the various job sites changed from what you used to do when Joe LaPore and his partner were installing floors?

A What I did or the company did?

Q The company?

A Oh. Well, when he took over we were getting more floors to put in, neotex floors.

Q Right.

A And we got a bigger machine with a vacuum on it, we didn't have that before.

Q You were actually performing work, installing synthetic or chemical floors, chemical products at that point in time?

A I don't get your question. Are you talking about me or what the company did?

Q I'm talking about your observations.

A Oh, my observations?

Q Yeah, that the company went out of the installation of the marble and terrazzo business and went into exclusively into the installation of chemical floors, isn't that true?

A Yes, they didn't get too much terrazzo. They might have gotten a few jobs.

Q Do you remember any, after Joe Cordi?

A You mean Joe LaPore?

Q Joe Cordi, any terrazzo floors at all after Joe Cordi became President and owner of the company? Do you remember any of them, any of them?

A We did a few, yes.

Q Where?

A Well, over there at Watervliet Home for -- St. Coleman's Home.

Q I'm talking about apoxy versus terrazzo. Did you ever see him have a cement terrazzo floor after he became President?

A No, I didn't see any cement terrazzo floors, no. I mean I never seen any, maybe he did but I never seen it.

Q Okay. Did you work consistently during that period of time, on a lot of jobs?

A Yes.

Q Now, in October of November of 1974 do you recall how many places you worked, how many job sites?

A October of '74?

Q All right, let's make it November or December of 1974?

in the two or three years before Mr. LaFore gave up the corporation to Cordi?

THE WITNESS. Well, we usually with Desco we don't usually do cement terrazzo.

Q (By Mr. Hilbern) And is this true when Mr. LaFore -- the two or three years, let's say, before Mr. LaFore gave up the company that you didn't used to do cement terrazzo work?

A No.

Q It's true?

A It's true, yes, we don't do much cement terrazzo work. I mean, I don't think I can really remember a cement terrazzo job.

Q Now since Mr. Cordi took over the company in 1973, have there been any changes in the type of work that you have had to do because of new floor systems?

A What was this again?

Q Well, I believe that Mr. Spitas indicated on his cross examination of you that since Mr. Cordi took over there have been more epoxy floors put down than there had been before?

A Well, yes, there are more epoxy floors going in even each day till today it still continues to have more epoxy's being introduced.

Q Epoxy is the going floor material?

A Yes, everyone seems to go in that direction.

Q Right. But do the job tasks that you perform on epoxy -- are they any different than the job tasks you used to perform on the other types of floors you were putting down before Mr. Cordi came?

A Well, they're almost the same. The mixing, you have to mix with a drill or if you put it in a cement mixer. I mean, that's still about the same thing.

Q And, how about the grinding, do you still have to do the grinding?

A You still have to grind it.

Q Are there any real changes in what you're doing now -- excuse me, or what you were doing the last time you were working for Lasco and what you were doing when you were working for Mr. Labore?

A No, there is not too much change, except like I said, we had a bigger machine and vacuum on it so you don't choke on the dust, but, not much change.

Q Just things that Mr. Cordi bought, they were the only changes in the work that you do?

A Yes.

MR. MULKERN: I have no further questions.

RE-CROSS EXAMINATION

BY MR. TOCCI:

Q Just for clarification, Allie, did you ever become

208c

a member of Local 6 or 16?

7

A All I did was pay the $133.00 and, I believe, I did sign some kind of an application, but, I don't think I was a member because --

Q You were never sworn in as a member?

A No, I wasn't sworn in.

Q Did you ever receive a membership card or book?

A No.

Q And, you never paid dues to the Local 6 or 16?

A No, I didn't pay anybody.

MR. TOCCI: I have no further questions.

RE-CROSS EXAMINATION

BY MR. SMITAS:

Q Mr. Mohamad, isn't it true that the base that was installed on the South Mall had never been installed, to your knowledge by Dasco Vitro-Glaze, before?

A The base?

Q Yes, the base, the material used.

A We never put base in before, is that what you're telling me?

Q I didn't say we put base in before. Did you ever put that type of base in before? -- with that material?

A I still don't follow you.

Q Did you ever use A-81 before?

A 8-81?

Q Right.

A I don't know if it was 8-81, it's --

Q A-81.

A I'm not sure about the number, but there was a new kind of material introduced there.

Q Alright.

A I mean the material we used there, it was new. There -- that kind of material.

Q Did you ever install Industrial 67, Formulation Flooring on the same basis that you did at the South Mall?

A Still, you have to -- I really don't, I'm trying to

Q I'm pointing out your --

MR. [illegible]: Your Honor, I object. I think that this questioning is getting irrelevant. In any event, it is surely getting overly burdensome.

JUDGE MILLER: No, I don't think so, overruled.

BY MR. S[illegible]IVAS:

Q What I'm pointing out to you: isnt it true that when Joe Cordi came in, that the Employees at Desco Vitro-Glaze were confronted with new floor systems, new materials, new methods and new techniques?

A We did have new kinds of floors, yes, everyday it does. Even, probably until today.

Q Right.

A Newer material will come in, but, we still mix it the same.

Q It doesn't happen everyday, now?

A Well, not every day, but, I mean, as we go into the future, there, probably will be new materials. Like almost all the time, you might find something new on the job.

Q So the record is clear, you don't see any distinction between the materials and the type of materials that were installed after Mr. Cordi took over the business? I mean, we're sitting here and I'm asking you a question: in your experience and your observations in dealing with this company before and after Mr. Cordi's takeover, I'm asking you a question. In your observations, was there a difference between the type of materials, type of methods, type of installation, materials that were used prior to Mr. Cordi's taking over and after he took over?

A Some, yes. I would say yes. There is a difference.

Q Right, considerable difference, isn't that true?

A In materials, probably, yes.

Q Right.

MR. SMITAS: I have no further questions.

RE-RE-DIRECT EXAMINATION

BY MR. MULKERN:

10 Q Just one question for clarification. There is a difference in materials used, but, did this difference in materials used, change the actual job that you did as a helper?

A The materials have changed, but, the way you apply it, you mix it and handle it, it's still the same thing.

Q How about the grinding? Did the grinding change?

A Well, the grinding is just about the same, only, they introduced a bigger machine with a vacuum.

MR. SMITAS: Wait a minute, with this we're going to go everywhere here, unless I object. I think, when you're talking about grinding, you can grind it one way, you can grind it another way. If you be more specific. I'm objecting to the generalizations. I didn't say that there was a difference in what the men did. There is a difference in the methods and it --

JUDGE MILLER: I find it difficult to understand the difference between, when you say, the difference in what the men did and the difference in the methods.

MR. SMITAS: Two people can drive a motor vehicle. One could be a race car and the other one could be a truck. They are both driving. In this instance, an analogy that, is that, in this case, you can grind in using different methods or procedures. I'm not saying

DIRECT EXAMINATION

BY MR. MULKERN:

Q Now, Mr. Bombassaro, what is your occupation?

A I'm the International Representative.

Q For what union?

A The Marble, Tile and Terrazzo Helpers International Union.

Q And, is that the union in which Local 59 is --

A Affiliated, yes it is.

Q How long have you held the position of Interna al Representative with that union.

A Approximately, three years.

Q Are you familiar with the work jurisdiction of the Tile, Marble and Terrazzo Workers Helpers who are members of your union?

A Yes, I am.

Q I show you what had been marked for identifica as General Counsel's 20 and ask you to look to page two, Article 2 of that document. First of all, wha is the document?

(The document, above-referred to was marked Board's Exhibit for identification.)

A That's our International Union Constitution an Bylaws.

Q I ask you to look to page two, Article 2 of th document and read that over.

A I don't know what you're referring to when you

say page two. This is page two.

Q What I mean is Article Two, Section -- Article

Two.

A In its entirety?

Q Yes. Does that accurately describe, in general

the work jurisdiction of your International Union?

A Yes, it does.

Q I would ask that GC 20 be received into evidenc

MR. TOCCI: I would object to it being irrelevant to the proceeding.

JUDGE MILLER: I think it has some relevance. I'll receive it.

(The document above-referre
to as Board's Exhibit 20, w
received into evidence.)

MR. SHITAS: Just to the record is clear, I object, too.

JUDGE MILLER: Alright.

BY MR. MULKERN:

Q Now, directing your attention to on or about

February 18th, 1975, were you in Albany that day?

A Yes, I was.

Q Did you have occasion to visit any job sites i

the area?

14

A Yes, I did.

Q What job site did you visit.

A The Mental Health Lab in the Empire State Mall.

Q What time were you there?

A Approximately 2:30 in the afternoon.

Q Was anyone else with you?

A Yes; business agent, David Davenberg, Local 59.

Q Did you speak to anyone at the job site?

A Yes I did.

Q With whom did you first speak?

A Allie Mohamad, a helper working on the job.

Q Did there come a time when Desco president, Joseph Cordi came into the conversation?

A Yes, there did.

Q Did you then have a conversation with Cordi?

A Yes, I did.

Q Was anyone else present during this conversation?

A Yes, David Davenberg, business agent of Local 59, and, at some points throughout the conversation, other people; Allie Mohamad, John Segatto and, I believe, Dominick Maratta.

Q What was said in this conversation?

MR. TOCCI: I would like to have a continuing objecting as to Local 6 and 16.

15]

JUDGE MILLER: Thank you. I overrule the objection.

MR. TOCCI: Yes, but, that this -- nobody is there to --

JUDGE MILLER: Nobody is there to bind them.

THE WITNESS: I had talked to Mr. Cordi about a week and a half prior to that conversation by telephone and told him that I was going to be in Albany on the 19th of February, 1975; and, told him that I had been made aware of a problem through my International Union, that our Local affiliate 59 was having with his company. By that, I meant it had been reported to me through my International -- Local 59 was having a hard time getting a signed collective bargaining agreement with Mr. Cordi. And that also, members of our International Union were being issued union books from the Bricklayers Organization. As I said, I had discussed this briefly with Mr. Cordi, in a phone call. I think that was on February 12th -- that I placed to him and, he agreed, in that conversation, to meet me on the job site and discuss signing or not signing a collective bargaining agreement, but at least discussing it. Because of the phone conversation, he told me that he had changed his mode of operation and that he felt that, in the future, he would no longer need Local 59 members to perform his work, and, therefore, there would be no necessity for him to sign a Local 59 collective bargaining agreement.

As our conversation on the job, it was along the same line. I asked Mr. Cordi if he would consider signing the Local 59 collective bargaining agreement. He told me that he didn't -- that he wouldn't and, one of the reasons why he wouldn't, that over the past few years, he had been getting a lot of harassment from -- and he pointed to David Lavenberg, business agent, -- he mentioned to me that -- case in question, Saratoga, the job name at the time slips my mind. I think it was Skidmore College, something to that effect, where he had brought him up on charges to pay travel pay. He also mentioned to me the fact that he had reported to the Labor Consultant, on the job site, that he had a non-resident working for him at the time. And, because of these factors, because of this harassment, that -- and, because of the fact that he had entered into an agreement with the NADAF organization, that he no longer had to put up with this harassment and, that he was going to go strictly chemical products worker, under that agreement. I asked him if he would reconsider. About that time, I think, Allie Mohamad joined the conversation and Joe asked him, he says, you know, tell this man. Haven't we been one big happy family here? I treat you fellows good. I give you everything you deserve. Isn't that true? And, then, he pointed to Dave Lavenberg and he said, "What has this man in Local 59 ever done for you ?" With that I said, "Joe, listen." I said, well, he called over a few other employees in the meantime. Basically, John Segatto and Dominick Maratta to verify the statement of it being one happy family. And, I told him, Joe, you don't bring these type of questions to these men. I'm not interested in what happened at Skidmore College. I'm not interested in what's transpired between you and Mr. Lavenberg. My job, as an International Representative here, is to find out whether you'll sign a collective bargaining agreement with Local 59." He told me that, again, no. That he didn't think he had to sign that agreement. It was a quite lengthy conversation and I'm not going to try to repeat it word for word. Basically, this is what I arrived out of the conversation; that, he was not going to utilize members of Local 59. I said that I was under the impression that, at that time, that at that particular time, that he had members of

Local 59 working for him on the job site. Mainly, three of the individuals that were standing in front of us. He said, "Well, it's hard to say what organization they do belong to at this time." And, I said, "Well, I understand, and that's been brought to my attention through my International, that the Bricklayers, in the area of Albany, are issuing Bricklayer books under a classification known as the chemical products worker, to do this work. And, in accordance with the agreement that you have signed with NADAF, which is an agreement between painters and the Bricklayers and the NADAF contractors." And, I said, "Being that you have these men already in your employ from Local 59, does it make a difference what Local union they belong to?" I don't think he gave me a direct answer as to whether it would or it wouldn't.

Then, I went on to ask him that if they didn't join Local 16 and 6, would that either cause them to be let go, layed off or fired if they didn't sign up for this local union. The answer to me at that time, "It's hard to say."

We talked about many other things. He told me "Jerry, you know there's been a lot of changes in the industry over the years. It's a whole new ballgame. We're doing a lot of different things today. It's not the old cementuous business that it used to be years ago, and, I have to do what's best for my business." And many other things were said, but, I think they're probably irrelevant here right now. But, that evening -- I think that that basically ended the conversation. We left the job site approximately 4.30 in the afternoon.

BY MR. [illegible]:

Q Now, directing your attention to that evening, did you place a phone call to Cordi?

A Yes, I did.

Q What did you say to him, what did he say to you?

A I called Mr. Cordi at his home and I told him, "Joe, I know we had the discussion today and I hoped or wished that you would reconsider what we discussed today. You know, I feel that you should -- I would like for you to sit down with me and eventually come to an agreement on the Local 59 contract." He said, "Jerry, you know I can't do that." And, I said, "Well, you know, Joe, the work that we're talking about down on that job, I feel is how -- belongs to members of our Local 59 in this area. And, I'm going to take whatever steps I have to take in order to see that they get this way, and, that they remain members of Local 59 and that they stay apart from the Bricklayers." Well, he said, "Jerry, I've made my decision on how I'm going to run my company and you do whatever you have to do and I'll do whatever I'll have to do as an employer." To the best of my recollection, that ended the conversation.

Q Directing your attention to on or about February 20th, 1975, did you have a conversation with Aldo Molassi?

A Yes, I did.

Q Who is Aldo Molassi?

A Aldo Molassi, at that time, was the business agent for Local 6 of the Bricklayers and Allied Craftsmen in this local area, in the Albany area.

Q Where did this conversation take place?

A In the Albany Labor Temple.

Q What did you say to him, what did he say to you?

A I went to the Albany Labor Temple to see Mr. Molassi over, what I considered to be a problem between our two International Unions.

Q Just tell us what you said to him and what he said to you.

A I asked --

MR. SMITAS: Before you start -- Mr. Examiner, I'd like to impose the same objections that Mr. --

JUDGE MILLER: I really don't think that's necessary. Nobody is going to be bound by the statements of people who were not their agents. This is a problem inherent in any CA, CB case.

MR. SMITAS: I never --

JUDGE MILLER: I'll consider it a standing objection to all of the testimony.

MR. SMITAS: OK. That's good.

JUDGE MILLER: Proceed.

BY MR. MULHERN:

Q Just relate to us the conversation between you --

A Yes, I went to Mr. Nolassi's office and I asked Mr. Nolassi if he was aware of the problem that we had up on the Mental Health Lab job and, what I considered a problem with the fact that I had been informed by members of Local 59 and the business agent of 59 that Local 6 had, in fact, issued a book under the chemical products workers or signed people to an application to his local union, under the chemical products union, to perform a -- more work. By that, I mean helper work. He said that he was aware of the problem. He knew Mr. Cordi. He did have men on the job. He did sign up a member of mine. But, that he was instructed to do so by the International Union of Bricklayers and Allied Craftsmen. And, I asked Mr.

Molassi if he had got this directive in the form of a letter communication, so that I could read it. And, he said that he didn't receive the directive in writing but he did receive the directive over the telephone. And, that he could understand my dilemma, could understand my frustration over what was happening there, but, he is a business agent for Local 6, had to answer to his International Union, and, that he was following their instructions in doing what he was doing.

Q Is your International bound to the AFL-CIO? -- Impartial Jurisdiction Disputes Board?

A Yes, it is.

Q Is the Bricklayers Union also so bound?

A Yes, it is.

Q Did there come a time when your International submitted the dispute of Deco to the Impartial Jurisdictional Disputes Board?

A Yes, we did.

Q Was there a hearing before the Board on this dispute?

A Yes, there was.

Q Did you attend that hearing?

A Yes, I did.

Q Did anyone from the Bricklayers International attend?

from this line of questioning because the ruling of the Joint Board is in evidence at this time. I — what I was just attempting to show was that Mr. Richardson was, in fact, arguing in behalf of Local 6 and 16. But, I think that it's readily apparent. The award of the Impartional Jurisdictional Disputes Board is in favor, by its very terms on its fact, is in favor of Local 53 and against Local 6 and 16.

JUDGE MILLER: I'm not sure what that does to any substantive issues before me.

MR. MULKERN: That's for your determination.

JUDGE MILLER: Alright, then you're stopping this line of questioning now?

MR. MULKERN: I'm going to, your Honor. Inasmuch, as I imagined that it was basically what was listened to today, and two days before.

JUDGE MILLER: Alright.

BY MR. MULKERN:

Q Mr. Pombascaro, in the past three years, since January of 1973 when Mr. Cordi took over ownership of Desco Vitro-Glaze, has there been an improvement in the technology of floor materials?

A I would have to say, yes.

Q In what direction has the technology progressed?

A For those who would be familiar with the industry

I don't think it's happened over three years. There's always been, as any other business, innovations made to try to improve a product. The product, basically, that we're dealing with here today, and as the industry had been over the years -- Mr. Smitas made mention of cementuous terrazzo. Cementuous terrazzo is probably the first inorganic type floor that was ever installed in buildings. It's also a cumbersome type floor. By that I mean, it's a lot of weight connected with it. It carries a two-inch, two to two-and-a-half-inch , in some cases, band, there are brass strips put into this floor in some instances. There is 3/4 of an inch to a half-inch of marble to go on top of that which makes the load bearing situation of cementuous terrazzo very heavy. So, whenever architects design buildings to put in cementuous terrazzo, they had to put a lot heavier steel and a lot more -- invest a lot more money in order to carry the weight of the building and so on. You know, for the structual surface, for weight of the material.

So, over the years, our industry, the terrazzo industry, felt that if they could come up with a product that was thin, light in weight, even though there may be some additional cost for the type of binders or liquids that hold the material together, that with what is saved in, say, putting up lighter steel to hold the building, that they would have a product that would be more easily able to sell and make a better market for our industry.

So, over the years, they did come up with ways of installing floor, anywhere, I believe, from 3/32's of an inch up, depending on the type or what the architect wanted or what had to go into the building.

Now, let me tell you about -- a little thing about this cementuous terrazzo. Cementuous terrazzo -- there's sand and cement brash (phonetic) strips and so on. But, there's normally --

Q Excuse me, I don't think we're really going to get anywhere if we go into cementuous terrazzo.

A What I'm trying to do is compare the two.

Q I don't know. I think we've heard quite a --

JUDGE MILLER: You asked the question.

MR. SMITAS: Your Honor, I'd like, I mean, I'll adduce this anyway. I think it's very critical that you and the Board and the courts understand exactly what this man is talking about now. We were precluded from doing this in the last hearing and all it's going to take is a little bit of discussion as to understand the products that are involved, because, basically, it is the underlined portion of our defense.

225

A Yes, basically, this work, I would say, from at least '55 to present day, with this type of flooring, I can't see where there's been an overnight change, say, immediate change in the industry. There hasn't been. This industry has been changing for the last, I would have to say, for the last 15 years. I mean, it constantly changes. Anything changes if they want to survive. One of our things today is the fact that we're having problems surviving. You know, maybe this isn't going to help us survive in the future. I think it is a coming thing. Alright, you know, that's an opinion.

Q In any event, the actual job, the work tasks performed by the helper, have they remained the same over the past 15 years?

A Yes, they have. You still have to -- I'll go a little bit further with that. You still have to unload the material, regardless of what the material is. You still have to distribute that material, regardless of what the material is. You still, in some instances, you have to mix it. It has to be mixed as it did when you did cementuous terrazzo. You had to put sand in the mixer. You had to put cement in the mixer. It had to be mixed to make a binding chemical in order to get down on the floor.

33 So, I would have to believe that mixing had to be done, as I said, handling, distributing, sanding or grinding, as we refer to it. In some instances, polishing, depending on the floor system that's going on the job. Now, we do not dictate that. The architect dictates that. He is the one to say what process. He also writes the specifications for what he wants, as the architect of that project, to go on that job. Then, we, as union members, and as working for contractors who perform this work, take them one at a time, just like playing a ballgame. You may have epoxy terrazzo here today and you may have magnasite terrazzo over here tomorrow. Basically, there's chemical differences in these two, but, you take them one at a time because you don't know what an architect is going to specify.

Q Are there differences? Admittedly, there are chemical differences between the two types of flooring, but, do those chemical differences lead to any basic differences in the type of performance that the helper has to do in assisting the mechanic, and, what the mechanic does in the basic installation?

A Definitely not. I don't think it changes

34

227

anything.

Q How about the grinding? Has that changed over the past 15 years?

A Grinding is like anything else. You know, they used to have a -- wet floor machines. I think Mr. Allie Mohamad's testified that Mr. Cordi saw it fit to buy a DryVac. I imagine that is what you're talking about. A DryVac suctioning machine that sucks the dust up into a barrel?

JUDGE MILLER: No asking questions.

THE WITNESS: I'm just saying that there's been a lot of changes. There's been new machines on the market. There's been, probably, better boarding machines, sanding apparatus have been added. The floors have to be sanded. I have to believe that there hasn't been an overly burdensome amount of changes. You still use the same machines and they may have added floor sanders over the past eight years, to the industry.

MR. MULKERN: I have no further questions.

MR. TOCCI: Can we go off the record for a minute?

JUDGE MILLER: Off the record.

(Whereupon, a short discussion took place off the record.)

36

Q At the time that you talked to Mr. Cordi, regarding the membership of certain individuals or employees, I believe it was January 29th, or 30th of 19 -- when was it?

A No, are you talking about the job site conversation?

Q Yes, right.

A It was February the 18th, of '75.

Q Isn't is a fact that at that time, there was only one employee that was a member of Local 59.

A No, it's not a fact.

Q Who else was a member of Local 59? -- besides Allie Mohamad?

A Dominick Meratto.

Q Making a distinction between making an application for and membership in.

A Dominick Maratta, Don Segatto, Coppola, Allie Mohamad, Constantine Psarras. To the best of my knowledge, those were the Local 59 employees that he had in his -- that were actual members of Local 59.

Q I would ask, at this particular time, that General Counsel and the charging party produce the membership roles of Local 59 for February of 1975.

MR. MULKERN: Are you subpoenaing them?

MR. SMITAS: I'm asking first for your cooperlaw. That is not entirely clear.

MR. TOCCI: I submit that that is in the posture of the record here, your Honor, obviously. I'm only speaking of that.

JUDGE MILLER: As far as the enforcement of the union security clause goes, I won't rule at this moment because I want to read the record. But, I will advise General Counsel, in light of the testimony that nothing was done beyond receipt of the initial deposits on their initiation fees and, that those were returned and there was no effort to collect thereafter. I have grave problems with that allegation. You're going to have to show me something in brief to make a violation on that allegation, putting all other allegations aside. That one comes to mind as presenting very serious problems of proof for you. I'll reserve ruling on the entire motion.

Who is going first with witnesses? Mr. Smitas?

MR. SMITAS: Yes.

JUDGE SMITAS: Mr. Cordi, you are still under oath.

JOSEPH CORDI

DIRECT EXAMINATION

BY MR. SMITAS:

Q Mr. Cordi, so that the record is clear, would

73 you tell us during the months of November through March -- November 1974 through April of 1975, what organizations Desco Vitro-Glaze of Schenectady, Inc. was a member of ?

A They were of member of the National Association of Architectual and Decorative Finishers which is the NADAF organization. We were a member of the Painting, Decorating and Contractors Association of America, which is PDCA. We were a member of Eastern New York Construction Employers Association.

Q Of Eastern New York Construction Employers Association, Inc.?

A Yes. We were a member of the Northeast Sub-Contractors Association and through the affiliation of Eastern New York Construction Employers Association we were also members in a number of other organizations that are tied in with that, the BIE, I believe.

Q The Building Industry Employers of New York State?

A Yes.

Q With respect to the masons -- Bricklayers, Masons and Plasterers International Union, Local 6, are you bound by a collective bargaining agreement by virtue of your affiliation with one of these organizations?

A Yes, I am.

Q Which organization?

74

A Eastern New York.

Q That is Eastern New York Construction Employers, Inc.?

A That's correct.

Q Is that agreement commonly know in this area as the Masons, Cement Finishers agreement?

A Yes, it is.

Q Is that a different agreement than the Tile, Terrazzo and Marble Workers Agreement which is also Local 6 of the Bricklayers, Masons and Plasterers International Union?

A Yes.

Q During the time that you were -- are president of Desco Vitro-Glaze to the present day, have you ever signed an agreement dealing with the Tile and Terrazzo workers terms and conditions of employment?

A Yes, I have.

Q When did you sign that agreement?

A I believe it was in January of 1975, on the basis that the terms and conditions of that agreement were not really applicable to our operations, but that the signature was necessary to cover the fringes that were stated for the employees working under that agreement.

Q I show you what has been marked as General

231

Counsel's Exhibit 10 and ask you whether or not that is the agreement that you signed in January of 1975? -- or a copy of that agreement?

A Yes, that is not the one that I signed, but it's a copy of the one I signed.

Q Now, we have here, in the hearing room, the original document of what has been marked as GC 10 and I would ask the trial examiner to take note that this is a document which is a -- has been admitted into evidence in the United States District Court to the Northern District of New York, Exhibit, and, consequently, I'm asking that this GC10 be admitted into evidence, rather than the original document. But, the original is here so that everybody can take a look at it.

JUDGE MILLER: Any objection?

MR. MULKERN: I have no objection as long as the date on the original is stipulated.

JUDGE MILLER: If you want to conform the copy or stipulate to the signatures and the date that is on it, that is fine with me. Do you have any objection to it coming in as General Counsel's Exhibit 10?

MR. MULKERN: I would prefer to the extent that it comes in as a Respondent's Exhibit.

MR. SMITAS: Then, we'll have to change it.

76

JUDGE MILLER: Just change the number and the next number would be Respondent Employer's 2.

MR. TOCCI: I would object to it coming in as an exhibit from General Counsel's case against Local 6 and 16, since it was not introduced by General Counsel in his case in chief and that's part of our motion to dismiss. So, I can't acquiesce in it coming in at this late time to prove General Counsel's prima facie case.

JUDGE MILLER: I will receive it for all purposes.

(The document, above-referred to as Respondent Employers No, 2 was marked for identification and received into evidence.)

MR. SMITAS: Can we have a stipulation that Mr. Tocci just gave me an agreement which is signed on January 30th, 1975 by Joseph Cordi, Desco Vitro-Glaze of Schenectady, Inc.?

MR. MULKERN: I will stipulate to its introduction into evidence. I won't stipulate that he signed on January 30th.

JUDGE MILLER: Will you stipulate that that is the date that it bears?

MR. MULKERN: Sure, there's no problem there.

JUDGE MILLER: I'll receive that stipulation.

Q (By Mr. Smitas) Mr. Cordi, did you sign this agreement on that particular day?

A Yes, I did.

Q Is that your signature?

A It is.

MR. SMITAS: Do we need a copy conforming it?

JUDGE MILLER: No.

Q (By Mr. Smitas) This is an agreement which was negotiated on the 19th day of July, 1973, between the Capital District Tile, Marble, Slate Contractors Association, and Local 6, 10 and 16 of the Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers Union International. Are you a member of the Contractors Association that I just mentioned?

A No, we are not.

Q So, the agreement, the masons and the plasterers agreement which you were bound by, Local 6 and 16, was by virtue of your membership in Eastern New York Construction Employers, Inc., and did not cover the work which is the subject of this hearing.

A That's correct.

Q The agreement that covers the work which is a subject of this hearing and the employees that are the subject of this hearing was signed by you as indicated in earlier testimony and is received as General Counsel's Exhibit No. 10?

A Yes

Q As a member of the Painters and Decorating Contractors, are you bound by a labor agreement by that organization?

A Yes, I am.

Q Which agreement are you bound by that affiliation?

A The Local agreement and also the Internationals.

Q Is that the agreement which is negotiated between the Capital District PDCA and the Local Painters unions?

A Yes, it is.

Q Did we change the designation of that exhibit, Mr. Examiner?

JUDGE MILLER: I think we're calling that Respondent Employer's Exhibt Number 2.

Q (By Mr. Smitas) I show you what has been marked as Employer's Exhibit One, and ask you whether or not you recognize that document?

A Yes, I do.

Q What is that document?

A It's the NADAF agreement, which is the tri-party agreement between the Bricklayers and Allied Crafts and the Painters and Allied Trades and the National Association of Decorative Architectual Fin-

79

ishers.

Q When did you become a member of the NADAF organization?

A January of 1975.

MR. SMITAS: I'll offer this into evidence at this time.

MR. MULKERN: I object, you Honor. I feel that any, what purports to be an agreement between the painters and the bricklayers and an employer association -- any agreement which doesn't include the helpers union is totally irrelevant to the facts in this case.

MR. SMITAS: I think, by virtue of the remand that the Board has already indicated that the Respondent Desco Vitro-Glaze should be permitted to go into this area of evidence.

JUDGE MILLER: I'm not sure if the remand dictates that. I'll take the evidence for whatever weight it deserves. It will give me a full record. I'll receive it.

(The document, above-referred to as Respondent's Employers Exhibit No. One, was received into evidence.)

Q (By Mr. Smitas) Mr. Cordi, by virtue of, is your company bound to the terms and conditions of Employers Exhibit Number One?

236

80

A Yes, it is.

MR. TOCCI: Is that one?

MR. SMITAS: Yes, Employers One.

Q (By Mr. Smitas) Prior to January, 1975, what was the posture of Desco with respect to the NADAF organization?

A I was under the impression, prior to January, 1975 that Desco was a member of the NADAF organization.

Q I show you what has been marked as GC 3, didn't this come out of the Desco files at the last hearing?

A Yes, it did.

Q You found this as part of the record in preparation of this trial?

A Yes, I did.

Q Up until that particular point in January of 1975, you believed that you were a member of the Desco -- or of the NADAF?

A Yes.

Q How did you happen to find that there was some question as to your membership in NADAF?

A I was at a contractors meeting in New York, composed of contractors similar to ourselves, that were doing seamless flooring and specialty coating work and I happened to discuss the employees that were doing the work, the various unions that have claimed

81 the work and I was informed that, as a member of NADAF, that this covered the jurisdiction of this particular type of work and, I inferred that we were members of NADAF and was told that we were not.

Q Did you receive or was there anything in your files to indicate to the contrary, the first paragraph, General Counsel's Exhibit number three which reads, "Your membership application to this newest of the specailly construction trade groups has been approved and accepted by its incorporators..." Did you find anything in your files or in your records to indicate that at the time, the making of this agreement, which is now Employer's Exhibit No. One, February 1, 1972, that you were not a member of the NADAF organization, and bound by Employer's Exhibit 1.

A No, I didn't. It was quite to the contrary. We still continued to get notices. Of course, this was a little conflicting as being, also, a member of Desco International. I believe that through Desco International, we were getting notices of the activities of NADAF and the conventions and so on and so forth.

Q Did you mention or advise the business agent and the arbitration panel, those present, at the arbitration in November of 1973, of the existence of the NADAF agreement?

A Yes, I did.

Q Did you, at that time, tell them -- what did you tell them at that time regarding the NADAF agreement?

MR. MULKERN: I object, your Honor. This is all hearsay and totally irrelevant to the issues in this case.

MR. SMITAS: It's not hearsay inasmuch as it was told to the president who testified to this meeting and the business agent who also testified as to this meeting as to what happened.

JUDGE MILLER: Alright, proceed. Overruled.

THE WITNESS: When I attended the arbitration meeting, to discuss the issue of travel time at Skidmore College, the job we had there; I had so informed the arbitrators from both the contractors group, labor group, that we were not signatory to the Local 59 agreement; that they had no jurisdiction over us and that we were members of NADAF, and, that the jurisdiction for the work that we did in the specialty operations, , our seamless floors and decks was covered under the NADAF agreement.

Q With respect to the work that you performed, -- let me ask you this. Did the NADAF agreement apply to the work that was being performed since you became in control of the company in January of 1972 to date?

A Say that again.

Q Is this, Employer's Exhibit No. One, cover the terms and conditions of employment of employees working on work that is done and performed by your company since January, 1972 to date?

A Yes.

Q Mr. Cordi, would you tell us and for the record the type of work that is performed by the employees of Desco Vitro-Glaze. In particular, the type of work that was performed since January of 1972 through April of 1975.

A The phase of our operations that is pertinant here would be our seamless floors and decks, although we are also in the painting and decorating business and, we also have a coating operation, specialty coating. The seamless floors and decks is a field that may have been in process for a good number of years, but, has recently sort of surfaced and has come in to its own. It's a specialty field relying on special techniques and methods of installation and application. Our people are trained, specifically trained in the various phases and techniques of installation of the specialty floors and decks. We spend considerable time, effort and energy training these people. There is factory training that takes place, provided for by the manufacturer, provided for by the contractor. It goes beyond the normal techniques of the common trades. It's more specific. The mixing is more meticulous. It's not a slot -- a half-hazard type of mixing. It's not a common type of mixing. There are numerous different applications in materials. One has to be a technician to some extent. One might have to be a part chemist to another extent. But, it incorporates all these things. There is no trade division or there hasn't been a trade division in the past. -- that had equity in this particular type of thing because it all had to be developed and everybody had to be taught to do it. Not that anybody had to have any special abilities to do it. It's just like anything else. It had to be learned. These special techniques that had to be learned had to be consistently policed and provided for.

Q Did you find that since you took over Desco Vitro-Glaze that any International Union, whatsoever, painters, mason, helpers, had an apprenticeship program which was applicable to the type of installation that you are doing at the present time, did since 1972.

A None did and still, there isn't any to date that have.

Q Let me ask you this. Your employees, which you have, which are, which you might consider as your steady employees, do they travel from job to job?

A Yes, they do.

Q When required to -- if you send certain employees to an area, do you utilize local people of that area that you travel to?

A Very rarely. If the job is large enough to facilitate untrained people, we may. But, it's an exception, not a rule. Our type of operation might utilize two, three, four, five men. This is more the common type of thing. You might see two men in Utica putting up a deck or three men in Poughkeepsie installing a floor or a group, a team of three men in Norwich installing epoxy base. So this is more of a common type of thing. To do this, it's like any coordinated effort, one has to know what they're doing and it's awful difficult to get anybody in a local area that has been exposed to this particular type of work.

Q Let me ask you this. When, in certain systems, and I gather there's a number of type of systems that can be put in in either floor or wall covering, is that correct?

A That's correct.

Q Let's take the particular systems that were operated at this particular -- at the South Mall. At the Motor Vehicle building, which, I understand, is one of the buildings that you worked on in the South Mall, is that correct?

A That's correct.

Q Incidentally, was this South Mall job the largest job that Desco Vitro-Glaze ever undertook?

A Yes, it is.

Q How did that compare to the ordinary job that your company did.

A It's probably a once in a lifetime job. Probably never see another South Mall in this area.

Q What was the dollar value of or the approximate dollar value of the work that was performed on the South Mall?

A In excess of a million dollars.

Q At any particular time when the operation was in full swing, how many employees did you have employed at the South Mall on installation -- on your contract.'

A Between 20 and 30.

87

Q On your Motor Vehicle building, what crafts and trades, if you know, did these employees belong to?

A We looked at it a little differently. We looked at it as a team. We said that, you know, on a football field, you've got an offense and a defense, but they're all football players. You know, you might call one an end and another a center. But, to us they are all football players. So, therefore, we utilize our people predicated, more or less on their abilities. Their abilities and capabilities. Some may have been in the painters union. Some may have been in the masons union. Some may have been in the terrazzo workers union. Some may have been in the, as we hear here, in the helpers union.

Q Isn't that, as a matter of fact, J. C. Hamilton a member of the laborers international?

A Yes, that's correct.

Q Wasn't he an expert in the installation of these specialty products?

A Well, I wouldn't say he was an expert in the installation, but, he was brought in because he was an expert in the handling and mixing of these materials, as I was made to believe. You can correct me if I'm wrong, but I was under the impression he had

88

numerous years of experience with the Gelling (phonetic) Company, in Cleveland, Ohio, installing Dexotex materials, and that he was quite proficient. Another thing about these materials, too, is that they have to be mixed properly and with considerable skill.

Q As a matter of fact, the subject of his employment came to be a point of contention between you and the business agent of local 59, correct?

A Yes.

Q Isn't it true that one of the exceptions in the residence requirement in the contract in the state of New York is that if a person was expert in a certain craft and that person was available in the area, he would be allowed working on the job site.

A That's correct. I believe they require six months residency in the state of New York.

Q And, Mr. Hamilton, was he able to continue the work on this job site?

A Yes, he was.

Q With respect to the Motor Vehicle installation -- the contract, what was the federal work that you performed at that job site?

A At the Motor Vehicle building, we were installing what we call, an autodeck system.

Q Basically, what is that?

A It was being installed in the parking garage. It's a flooring system with membrane for the, say, the traffic, bearing, decking for parking garages. It was being installed in the parking garages of the Motor Vehicle building on Swan Street. Which was, that particular installation, was the second installation of its type ever performed. Prior to doing that installation, while doing the first phase of that installation, all of our people were being specifically trained under the direction of the factory and ourselves.

Q Where was the first installation of this particular system?

A I don't recall, but this was --

Q Was it in this area?

A No, this was the second. The first may have been, I'm not positive, but, the first may have been in Florida.

Q Do you know for certain, that it was not done in this area or the jurisdictional area of Local 59?

A Oh, I'm positive of that.

Q Okay, now --

A The area we cover is larger than that of Local 69 and it wasn't done in our area.

Q Was there a division of work assigned to any particular employees on this job?

A No, as I said before, we, sort of, utilized our people as a team. Those that were capable of doing, you know, those that had capabilites in one phase, we'd try to utilize them in that phase. Those that had more capabilities in another, we'd try to use them -- it's maybe, like saying that the best first baseman plays first base and the best second baseman plays second and the best third baseman plays third. So, we could care less and we try to utilize everybody. It was our philosophy is, you know, a day's pay for a day's work.

Q Do you know of any employees who were characterized here at this hearing as helpers and members of Local 59 that assisted in installation of the materials installed in this autodeck system?

A Chris Glantzis, that was classified as a helper prior to promotion, definitely installed the first phase of this system, prior to becoming a mechanic. This is where he got his -- these people have been doing this for -- people like Dominick Maratta and Dominick Coppola and John Segatto. In fact, John Segatto, himself, after Chris Glantzis was promoted, to a mechanic asked to be promoted to be a mechanic prior to 1975. This is where these people got their qualifications. It has been historic in this industry that there is up-grading through the ranks. They were doing, these people I mentioned like Maratta and Coppola, Chris Glantzis, and John Segatto and Louis Levisa; these men have been doing this for numerous years.

Q What was the criteria that was used in the signing of employees the functions that were to be performed in the installation of these materials?

A Based on their capabilities. Those that were good trowel men utilized trowels. Those that didn't have the experience or the background did the cleaning or masking or the mixing. Those that were good at mixing, mixed. Those that you had some faith in, really, knew how to mix; knew the proportions of mix. You didn't just throw people in and out of mixing or these different phases, because, then you got into an awful lot of trouble. It's not like painting a wall. If you put the wrong color of paint on a wall, it's an nominal cost to recoat a wall. But, if you did the wrong thing on an epoxy floor, that floor, normally, had to come up and be replaced, then you're talking about an awful lot of money. Sometimes two or three times the cost of the original. So, in alot of your installations it was contingent upon everything being done right. Your mixes being handled properly, you know, in epoxies, knowing that you had enough resin to catalyst. In your neoprimes, knowing that you had enough paste to powder, because, if you had more than,an unbalanced situation, you would have a failure. Especially, when you are dealing with membranes. We were basically, vulcanizing a membrane neoprime and reenforcing it with fiberglass right there in the field. The type of thing where we were utilizing raw materials such as powders and paste and fabric and applying them; and, coming out with a solid membrane.

Q So the mixing was more than just the combination of just two materials and a much more complicated item, is that fair to say?

A Very complicated in specific entity.

Q In the application, there were layers of application of this product at the Motor Vehicle building, isn't that correct? Wasn't this a three-coat system?

A It's a multi-coat system, yes. Absolutely. What it consisted of, in these seamless floors, especially component systems, preparations are the criterias of success of any seamless floor. So, we brought in new methods in preparation. What we did in this particular case, we had a floor that was installed for three years and had three years of grease and soot and dirt and oil and gasoline and salts, and, this had to be properly prepared so, we came in with new type pressure washers, a 10,000 PSI pressure washer. It was basically, the only one that this area has ever seen --

Q What type of employees did this --

A -- sort of water-blasted it. Everybody did. We had mechanics on it. We had helpers on it. We had painters on it. This was a combination type of thing. It, actually, is really a water-blasting system with 10,000 PSI pressure. We went to Cole Chemical in Schenectady and asked them for a -- to conjure up a formula to utilize for removing the grease and so on and so forth; which, they did do. They don't tell you what it is. It's probably a phosphate solution and they put a special label on it and now they are selling it as their garage floor cleaner. These are the type of things --we also innovated on that job the utilization of the squeegy for installing a membrane. This is something that was never, ever done before.

Q Who did this?

94

A Everybody did. Everybody utilized the squeegy. It was a team effort. What we did in this particular case is we utilized 55 gallon drums. We had special mixes. We put a molasses spout on the drum. We put it on wheels and the material was mixed. It's a neoprime type of material. The material was mixed in a drum. The spout was open and we just moved right along.

Behind the drum came a team that squeegied this material onto the floor. Behind that team came a team that rolled out the, in this particular case, what we call a rot-resistant fabric that was rolled into the material. And, behind that came another team that rolled in, what we call, a moisture bond material that saturated the fabric. Over the fabric, we installed a wearing surface which was a neotex. This was all trowel applied, and, was sanded down to get the trowel marks out of it to get it to a flush condition. Over that, we put in a filler coat of a neoprime. And that, was again applied with a squeegy and the big drum type of thing. Then, over that, was applied a finish, which was a two component system.

Q Traditionally, the use of a squeegy in the application of materials, was claimed by what international?

A Well, traditionally who uses the squeegy? The painters use a squeegy. Window-washers use the squeegy.

Q Painters is what I was looking for.

A The painters are utilizing the squeegy system on the wall right now with the painters in Norwich which is a coating application.

Q You were going through the processes and you got to the point of grinding, and go ahead.

A We did some grinding in the initial preparation of the floor, prior to the water-blasting and the solvent. And, also, we also acid-edged this floor. In this particular case, we had the parking stripes on the floor that we utilized what we had; a tooth type grinder. We call it a hand-revel tool and we ground off the parking stripes with this particular machine and, also, some disc sanders. We, also, took some rough spots on that floor.

Q Were mechanics utilized for all of this?

A No. They were a combination of both down there. There were mechanics and helpers and this is where we first got into a little trouble with Mr. Molassi coming down there and critisizing us for --

Q The term that you use, helper, why do you use the term helper?

A I'm only using it because this is what we're referring to. I refer to them as another worker, as an employees, part of the team.

Q We have certain individuals that were new during the course of your installation process on the South Mall. Mr. Glantzis and the people that he brought in --

A Mr. Glantzis wasn't new, but Mr. Sotiriou and Evangelidis and Psarras were new. They were probationary workers, and, they were brought in and, basically, as a good samaritan type of thing. Our superintendent, Kenny King, had developed a relationship with Chris Glantzis and he knew that we going to need additional help. But, it was our philosophy, my original philosophy was to train young people because we need this training program in our organization. I guess Ken King, our superintendent, had a little more than a working relationship with Chris Glantzis and I basically, gave him his head under these circumstances because we were extremely busy at the time and doing an extreme amount of work.

Q Did you utilize the Local 59 hiring law, to obtain individuals?

A I never, ever did. I never, ever did.

Q In November, December, January and February of 1974 and 1975, in November and December of 1974 and January and February of 1975, how many jobs did you have going during that particular time? I handed you a group of papers, would you tell me what they are?

A Yes, they are our payroll journal records.

Q On this is there an indication somewhere of the jobs that you had going on?

A Yes, there is a list of employees and a distribution of payroll expense costs to these jobs.

Q Would you tell us, beginning with November of 1974, what jobs you had going at that particular time?

A In November, payroll period ending 11/13/74, we were working at the Health Labs in Albany. The Albany Airport --

Q One minute. Can you tell from this document what employees worked at the Albany Airport that week?

A Yes, I can.

Q Who worked on that job?

A It looks to me like Oscar Clolier. (phonetic)

Q Oscar Clolier. Do you know what union, if any, he belongs to?

A No, he didn't belong to any. He's our shop man.

Q He's your shop man?

A Yes, he is.

Q Anybody else?

A That's all, let's see. He must have been setting up. Albany Airport, Dominick Coppola.

Q Dominick Coppola?

A Right.

MR. MULKERN: Excuse me, have those been marked for identification?

MR. SMITAS: No, they haven't. If I mark them for identification, I have to supply copies and they are available here.

JUDGE MILLER: If you are not going to introduce them, I'm not going to insist that they have to be marked.

THE WITNESS: Alright, that's basically what this shows.

Q (By Mr. Smitas) Okay, what is the next job you had?

A I had the health labs, Swan Street office building, Glens Falls Hospital , Middleburg School --

Q What was that, Middleburg School?

A Middleburg School.

Q Would you stop at that one. Would you tell us what employees you had working there?

MR. MULKERN: Where is this?

MR. SMITAS: Middleburg School.

THE WITNESS: George Allen, Robert Broomhall,--

Q (By Mr. Smitas) George Allen is a member of what international?

A He is a member of the painters.

Q Who else at the job?

A Robert Broomhall. He's a painter.

Q Was that a painting job?

A Yes, it was. It was a coating job.

Q What do you mean by coat?

A Wall coatings.

Q Is it something which would be under the NADAF agreement?

A Yes, it would. In a coating operation, we also have Glens Falls Hospital --

Q Let me ask you this. On the Glens Falls Hospital, let's go this way. On the Glens Falls Hospital job, how many employees did you have on that job?

A On the week ending 11/6/74, we had Michael O-Malley, which was a mason out of Glens Falls Local.

Q Not a terrazzo worker?

A No, not a terrazzo worker. He was a cement finisher. We had Mohamad Allie in November of '74 on Glens Falls Hospital. We had Oscar Clolier.

Q Who was he?

A That truck driver, shop man.

Q Next job.

A Holy Cross Monastery in Poughkeepsie.

Q How many men did you have on that job?

A One.

Q Who was that?

A The superintendent.

Q What is the next job?

A Martha Van Rensselaer -- it's a building down at Cornell University in Ithaca.

Q Who did you have on that job?

A Edward Mucci, who was formally a helper and promoted to a terrazzo worker and John Segatto and Kenneth King. John Segatto, at that time, was a helper.

Q What is the next job?

A GE, Syracuse. The General Electric Company in Syracuse, electronics park.

Q How many employees did you have there?

A Don Dustafono (phonetic), terrazzo worker, J. C. Hamilton, laborer out of, I believe, Ohio; Dominick Coppolo, at that time classified as a helper; Dominick Maratta, classified as a helper and Kenny King, Again, superintendent, must have spent some time there.

Q What is the next job.

A Wait a minute, I'm not through with this. Also,

101

Oscar Clolier spent some time there and, Luciano Perradi, who we call Peppy. He's a painter and he was on that job also.

Q What is the next one?

A Binghamton State Office Building. Apparently, Eddie Fucci and John Segatto shot over from Cornell to do some work over there.

Q What is the next job?

A Schaeffer -- oh, that's Union College. That's a painting and coating job. We did maybe not this week, but I do recall, Union College, we did utilize -- it was a coating system. We did utilize masons on that job. Hudson, that's painting. St. Claire's Hospital in Schenectady. That was strictly painting and vinyl wall covering. Campbell Avenue, I'm not familiar with. I don't know what Campbell Avenue is - what we did at Campbell Avenue. St. Peter's Hospital here in Albany; that was both flooring, coating and painting. It was a major project for us. On this particular week, we had -- we were mostly in our painting operation. Most of the people we had here -- we had one, two, three, four, five, six, seven, eight, nine, ten --- ten or so painters.

Q Would you look into the next week and see if there is any additional jobs that are added that you talked about.

A Health labs, pops up here. Clifton Park Office Building; that might have been, yes, that was on the previous week, a coating job. Albany High School, again,

Q I'd like to short-cut this and with that thought in mind, I'll ask some general questions.

THE REPORTER: Excuse me, your Honor. May I change the tape?

JUDGE MILLER: Yes, let's take a couple of minutes for a break.

(Whereupon, a short recess was taken.)

FURTHER DIRECT EXAMINATION

Q (By Mr. Smitas) Mr. Cordi, would you tell us during that week the total number of employees that you had employed?

A The payroll record shows fifty employees, approximately.

Q How many?

A Approximately fifty employees.

Q How many jobs?

A We were on one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, roughly, about twenty jobs.

Q Other than your superintendent, who else did you have, did you have anybody that were classified as supervisors?

A Well, on our larger jobs, say, like Swan Street parking garage, Chris Clansis (phonetic) was moreorless overseeing that job under the supervision of Kenny King.

Q At that time when Chris Clansis was the supervisor or foreman, was he a member of Local #6 of the Masons or #16 of the Tile & Terrazo Union?

A In, well, this is 11-13 payroll period for week ending 11-13-74 and I believe Chris was ungraded in December, if I' not correct.

Q So, in other words, at the time that he was over other people who were classified as mechanics, he was still a member of Local #59?

260

A That's correct.

Q Before his upgrading to a mechanic?

A That's correct, so apparently, he must of had considerable skills along these lines.

Q How about the rest of the small jobs, who would supervise on a small job?

A On a two-man job there wouldn't be any supervision necessary, your superintendent would lay out the work and the people would know as a team and having been experienced in this particular type of work, they would approach it as such, they knew what had to be done and they knew how to do it.

Q Now, you were installing an A-81 base at the South Mall, is that correct?

A Yes, that's correct.

Q How much time would a laborer or an unskilled individual take to, in mixing enough material to keep a mechanic busy for the day?

A Well, in our method of application of an A-81 base, such as was used at the health labs at the South Mall, we normally worked with a three man team and the amount of mixing time required for that particular type of team for the course of a day would probably be about four batches which might take fifteen minutes per batch, so you might say the total amount of mixing time for that particular team or crew would probably be an hours worth of work so the remaining seven hours that man had to be utilizing himself as a mechanic.

Q Would it be economically feasible for your operation to employ a member of the, an unqualified member or let's put it, withdraw it. Would it be economically feasible for you to utilize a member of the Helper's International on a small job, two, three man, four man job, without that individual working and performing functions which has been during the course of this hearing as described as mechanic's functions?

A It wouldn't be economically feasible at all.

Q If there was a sharp division between that function given to helpers and that which was given to so-called mechanics, what would happen on a situation of this type?

A Well, I'll site a specific situation that's going on right at the moment. At Norwich we're putting on an epoxy base --

MR. MULKERN: I object, this case does not concern what's going on right now, it concerns what went on a year ago, more than a year ago.

MR. SMITAS: I think he was using that as an example of forty different jobs that he had at that time.

JUDGE MILLER: I'll let him testify, using this as an example, proceed.

MR. CORDI: Again, we're utilizing a three man team to install the base and again we get back to the mixing time there. We would be able, if that man was confined to just mixing or doing what you would call, you know, "helpers work" we would have to pay him eight hours plus expenses and travel for approximately one hours worth of work.

Q (By Mr. Smitas) That would include all the functions as described by Mr. Bombassaro?

A That's correct, everything that he could possibly do, limiting him to only what is covered under his jurisdiction.

Q So except for a job of the magnitude of the South Mall, is it feasible to say that you could employ, economically feasible to employ individuals who are designated as helpers, in that category, without using, in some manner without utilizing them as a mechanic?

A No way possible. I don't think we'd be in business if we could do, had to do that.

Q So, the contention on the part of, would you say that the witnesses who testified, like Allie Mohamad, who testified that he worked 90% or 95% of his time as a helper on helpers work, is there proper evaluation?

A Well, I'd like to differ with the 90 or 95%. I'm under the contention that these workers duties didn't change because they were doing this type of work consistently, this work that they were trained to do and qualified to do. You might say that, I've heard an awful lot of conversation about trowel work, I think we should be more specific than trowel work, I man a cement finisher can pick up a trowel and finish concrete. A plasterer can pick up a trowel and put on plaster. A terrazzo man can put terrazzo down with a trowel, but all of those techniques that are significant to the cement finishing, that are significant to the plasterer or significant to the terrazzo man, don't apply here. You need different techniques with a trowel. We have utlized terrazzo, we have, basically, the technique is more consistent with the terrazzo worker but where, in many cases in many places where we've gone to, like say Geneva and hired local people because the business agents had forced them on us that were cement finishers and trowel men, they were not able to adopt themselves to the techniques that were necessary to install these special decks or floors or whatever the case may be that we were installing. In most of these cases all of these guys were nothing but excessive cost, frustration and most of the work they done we had to do over again.

Q Alright, but just hypothetically assuming, you were here with Mr. Allie Mohamad testified, is it possible that Mr. Mohamad, for one reason or another, could have gone on your job site, with the type of operation that you have and performed work which is being claimed by the Helper's International here for 90 to 95% of the time and not be sitting around?

A There's no way possible, in fact, the job that he was on that he discussed, the Ukranian Club job, 90% of that job or maybe 95% of that job was mechanics work and there was really only one mechanic on that job and three "helpers" on that job.

Q Well, tell me, what was that job? What type of material was it?

A It was a re-finishing, re-surfacing of a dexotex-traffic bearing roof deck. It was the removing of the deteriorated portions of the deck, the re-grouting of the deck, which is, when I talk about re-grouting or dexotex (phonetic), it's not anything analogous (phonetic) to grouting tile or anything of that nature. It's the application of a cement finish or neopreme-aluminite cement finish over the deck surface applied by trowel and then it's the sanding down and dressing off of that surface and this is again, in this particular situation, 90% of the work involved on that deck is strictly mechanics work, yet we had three helpers and one mechanic, on that job.

Q Now, of all those, on all the systems that you have, alright, in relation to Mr. Mohamad Allie's testimony, what portion, if you could, I'm not saying that you did, but if you could make a division between how much work, strike that. Let me ask, was there, since you've been in charge of Desco Vitro Glaze of Schenectady, Inc., any type of division based upon union membership of what employees did on a particular job?

A I'd say our work, and this again, I have to say, it's hard to distinguish this due to the fact that there aren't any trades that really have equity in this particular type of work, not until NADAT (phonetic) came along and said, look it, this is a specialty operation, and we should provide for this now that it's coming into its own, alright, I would say this, that --

MR. MULKERN: Your Honor, I object, I've allowed Mr. Cordi to be unresponsive to --

JUDGE MILLER: I think that was a question that could be answered a good deal more responsively than this and I'd like you to ask the question again and I'd like to ask the witness to answer the questions being asked. I think you can keep yourself to an answer, particularly to this question that's more specific.

MR. SMITAS: Well, your Honor, you're looking for a percentage? 75, 25?

JUDGE MILLER: Well, ask the question again. The question as I recall it was whether work had ever been assigned according to the union membership of the employee involved.

Q (By Mr. Smitas) Right. Has there ever been a division of --

A Oh, I'm sorry, I'm sorry, no, no, definately not, unless it got involved with painting and vinyl wall covering but we're talking, I'd say from my answers in the company, I'm going to exlude the painting and coating operation, is that understandable, I'm just going to limit it to the, what's at hand here which is the ceilings, floors, and decks.

Q You were a party of this jurisdictional and work rules agreement, commonly referred to the NADAF (phonetic) agreement, in that agreement, there is a work assignment, is that correct?

A Yes, which is techniques common to that division, that trade division that has jurisdiction in that.

Q Under that agreement, what type of employees or what classification of employees are arranged for?

A Chemical product workers.

Q Is there a classification of unskilled or semi-skilled employees or apprentices?

A Yes, they call them improvers.

Q And an employee, what categories would employees go into and who would put them in that category?

A It would based on the contractor and the ability of the employee. If he was not skilled and needed training in the system, he would be an improver. If he was qualified and had experience and background in the system, then he would be a chemical product worker.

Q When you joined the NADAF (phonetic) organization, were you advised of what categories employees would go into? What were you advised when you joined the NADAF (phonetic) organization and by whom?

A That we would utilize --

MR. MULKERN: Your Honor, I object. First of all, the question is leading, secondly, it's hearsay in any event. The document clearly speaks for itself, if it speaks.

MR. SMITAS: Alright, I withdraw the question, and you won't have to make a decision on it.

Q (By Mr. Smitas) In that agreement, there's a reference to local collective bargaining agreement, is that correct?

A That's correct.

Q What wage rate did you put into effect when employees made application to membership in Local #6 and #16?

A The wage, the prevailing wage rates of Local #6 and #16 pertaining to terrazzo workers.

Q When you worked an individual, some of which were characterized as helpers, and there were other employees, I believe you mentioned a shop man, and a Mr. J. C. Hamilton, who was a laborer, what wage rate did you use?

A Prevailing wage rates.

Q What do you mean by prevailing wage rate?

A Those that were posted for the lesser skilled worker.

Q And what do you mean by posted?

A Well, most of your contracts have a posted wage rate that it is incorporated in your special conditions which normally reflects the trades wage rates and benefits.

Q Now, this is on public contracts, is that right?

A Yes.

Q What did you do on private contracts?

A We followed the same principle.

Q Were there postings on private jobs?

A No, but once we had established a wage rate, we maintained it.

MR. TOCCI: Excuse me, this is the person calling about this exhibit.

JUDGE MILLER: Take that one.

MR. TOCCI: I'd take a minute just to tell him what we need to bring it down.

JUDGE MILLER: Alright, we'll go off the record a minute.

(Off the record.)

JUDGE MILLER: On the record.

Q (By Mr. Smitas) Okay, we mentioned, I mentioned to Mr. Allie Mohamad the health labs, what were you putting into health labs, what type of material?

A We were installing on phase two which is the Health Department laboratories, an industrial sixty-seven seamless flooring with a glass-[illegible] membrane (phonetic). On part one which was the main [illegible], in the cafeterias we were installing our industrial thirty-eight seamless flooring with a moisture-bond membrane.

Q Now, I asked Mr. Allie Mohamad whether he knew J. C. Hamilton, John Segatto and Jim Possalenni (phonetic), is that the way you pronounce it?

A Yes, Pulsenelli (phonetic).

Q Who were these people and what were they doing?

A Well, J. C. Hamilton, you know and I don't have to reinterate that, John Segatto, again, you know he was in the helper's union or in their organization, and Jim Pulsenelli (phonetic) was a member of Local #60.

Q Local #60?

A #16, Schenectady Local.

Q What were they doing on that?

A During the month of December when we were, the time frame or period that we were discussing, John, Joe Hamilton, John Segatto, Joe Hamilton, and Jim Pulsenelli (phonetic) were installing the A-81 base on the metal partitions in the Health Department laboratories.

Q Was this at a time, was Mr. Allie Mohamad employed there for a short period of time?

A I believe Allie Mohamad was up in Glens Falls at that time and I think he came down later, I don't think Allie got involved in part two until much later. I think he went from Glens Falls to main platforms part one and then over to the Health Lab, at least our records show him at Glens Falls.

Q Now, on the South Mall job, who was the supervisor that had the authority to hire and fire on that job?

A Kenneth King.

Q Did he have the authority to hire and fire any and all employees on that job?

A Yes, he did.

Q Did anybody else have any authority to hire and fire, recommend the hiring and firing of employees on that job?

A No, they did not.

Q Now, who directed the employees on that job as to what they were to do? That is, what person directed all of the employees as to what they were to do during the day?

A Kenneth King.

Q Do you know how the operation went from a day to day basis? Did they all meet at a certain spot, how did it operate?

A Well, we had anoffice down there which our office engineer worked out of and we had a tool room type of thing and they, with most of the, you know, with an operation such as ours and as a team operation, most of these people were on consistent operations. I'm sure that J. C. Hamilton knew that he had to man the mixer and I'm sure Kenny would give him a cue and say okay, start your mixer going and I'm sure he had a team set up to, you know, wheel the material, a team set up to unload, you know, etc., whatever duties had to be performed, I'm sure he scheduled it accordingly and saw to it and had, I'm sure he had subordinates overseeing that these various operations were done. I'm sure, you know, as I said, installing base, you know, the function normally took care of itself. He had a, I know he had a team on installing membrane in that particular phase, you know, these guys would just continue, you know, they'd have a team of three men, one guy would mix and they'd, in fact, as I understood how they operated on that membrane thing is they took turns mixing because they were all of, sort of equal caliber, so they alternated. One day one would mix, the next day the other one would mix, and they just kept the membrane going in.

Q Were all your employees paid by the same way, manner, or check or cash, how were they paid?

A We paid by check.

Q All of them?

A Every one.

Q Would they all receive the same holiday?

A We don't pay holidays, we pay by the hour.

Q Were all employees paid by the hour?

A All the trade --

Q Except the superintendent?

A I'd would say, yes, except our superintendent and office and shop --

Q Right, and did the employees all take coffee breaks at the same time or did they take coffee breaks at separate times?

A No, it was a uniform thing.

Q Were all the employees afforded an opportunity to wash up or were there different times in which they washed up?

A Again, uniform thing.

Q Now, when the employees travelled from location to location, how would the travel be allocated or determined?

A Depended upon where they went. If we felt that it was an expensive area and the men couldn't live on one rate per day, per diem rate, we would increase it accordingly, we would act accordingly.

Q Would the employees all receive the same amount of travel pay?

A In a specific area, yes, around a specific job, definately.

Q For instance, let's take the Ukranian Club where Mr. Allie Mohamad worked, were all the, were any of the employees given travel pay at that, on that job?

A. No one was paid travel or per diem in any way, shape or form on that job.

Q In other words, mechanics and semi-skilled individuals were paid the same, were not paid?

A As far as expenses are concerned, they were not paid expenses.

Q Now, when you upgraded the employees, certain of your employees you upgraded, isn't that correct?

MR. MULKERN: I object to the characterization.

JUDGE MILLER: Overruled, he can answer it.

Q (By Mr. Smitas) Alright. Didn't you, in fact, upgrade certain employees in January of 1975?

A Yes, we did.

Q Which employees did you upgrade?

A Well, this was, we've had several meetings on this, I'll be specific, we upgraded Joe Hamilton, Dominick Coppola, Dominick Marotta, John Segatto, Constantine Psarras, John Sotiriou(phonetic) and Dimitrious Evangelidis.

Q Did these employees all become mechanics?

A No, they did not, only those --

Q Which one's became mechanics?

A Only those that had considerable experience and knowledge in our type of work such as Dominick Coppola, who has been working with us for numerous years, Dominick Marotta, again, numerous years, Allie Mohamad and John Segatto, the rest of the employees were probationary employees as it was, oh, J. C. Hamilton was also upgraded, made a mechanic.

Q Did the --

A The remaining employees were classified as improvers and were probationary as it was.

Q Alright, after January of 1975, isn't a fact that you put into effect the WADAF (phonetic) agreement?

A That's correct.

Q Did you at any time threaten any employee directly or implied in any manner, an employee because of his membership in Local #59?

MR. MULKERN: I object to the question, it calls for conclusion.

JUDGE MILLER: It does call for conclusion but it's the language of the complaint.

MR. MULKERN: I would merely point out that in my questioning of General Counsel's witnesses, I was precluded from using this --

JUDGE MILLER: I realize that, it might be more helpful if the questions were more specific, I generally allow respondent --

MR. SMITAS: I was going to ask one and then go into each situation.

JUDGE MILLER: Okay, I generally allow a respondent to list his denials of coercion as alleged in the complaint.

MR. SMITAS: Why don't I go at it in a different way?

JUDGE MILLER: Alright.

Q (By Mr. Smitas) Didn't it, in fact, cost the company more money to upgrade some employees?

A Yes, it did, not some, all.

Q All the employees?

A Whichever one you upgrade, it costs more money.

Q For the mechanic's, what was the change in wages or benefits?

A Approximately, the base rate was increased approximately 75¢, I believe it was.

MR. MULKERN: I'd like the record to show that Mr. Cordi is referring to records.

JUDGE MILLER: Okay, thank you.

MR. CORDI: Forget the records, approximately 75¢ per employees.

Q (By Mr. Smitas) Okay, and then did the employees receive what is commonly known as mason stamps?

A Yes.

Q Do you know what the cost of those stamps are?

A Well, they're, the stamps reflect a $1.05 per hour for fringe benefits as against, I believe it was 30¢ an hour.

Q That were provided for previously?

A Yes, I believe it was an increase of 75¢ an hour for the improvers and $1.05 an hour for the mechanics including fringes.

Q Thank you, now, directing your attention, Mr. Cordi, to January 27, 1975 at the South Mall job site. Did you solicit your employees to withdraw their membership in Local #59?

A No, I did not.

Q Did you, can you relate to us what you can recall of that event. I believe, I'm not sure, but I think the complaint talks, in terms of an incident, where we were or I'm directing your attention to an incident where Mr. J. C. Hamilton and another employee, John Segatto, is it, were approached by you and Mr. Leventry (phonetic) Lavenberg, Sotiriou (phonetic), could you tell us the events preceding that and that particular event itself, would you recall that.

A I believe the day that Dave Lavenberg appeared on the Health Department laboratory project and signed up, J. C. Hamilton and John Sotirioy (phonetic), in his organization, Kenny King and I were in Geneva. We returned the next day and Kenny King reported back to me that J. C. Hamilton had complained to him that Dave Lavenberg had forced him to join his union, and also that John Sotirioy (phonetic) was also sort of pressured into joining the helper's organization. After receiving a report from Kenny King, I called Dave Lavenberg and asked him, inquired about it, asked him if he had pressured these people into joining and he told me that he didn't, that, so I asked him if he'd be willing to meet me on the job, very fairly we would confront the individuals and see what was what, if they wanted to join, they were perfectly free to do so but if they were pressured into joining and wanted their money back, I'd appreciate it if he complied, so he did meet me the next morning on the job.

Q Did you tell this, use those words to Mr. Lavenberg?

A Maybe not the exact words, I'm just referring to what I think the jest or the intent of conversation was.

Q Alright, go ahead.

A I do recall meeting Davy on the job the following day and with Kenny King and myself and Davy, we confronted J. C. Hamilton.

Q When you mean confront, what happened?

A We met with J. C. Hamilton?

Q Where?

A On the job where he was working, actually at the mixer to be more specific and we asked Davy if he was interested in, not Davy, but J. C. if he was interested in becoming a member of Davy's organization and he explained to us that he was already a member of an organization, that allowed him to do the work that he was doing and didn't feel it was necessary to join another organization.

Q Did he say what organization he was a member of?

A Yes, he said he was a laborer and he belonged to the Laborer's International Union out of the Cleveland, Ohio local that had been this type of work for many years under that organization and didn't feel it was necessary to join another organization, so I asked him if he wanted his money back, he said he did so Davy said that, I guess Davy argued a little bit to the point of whether he pressured him or not and offered to give him his money back which upon Davy produced a check with a signature on it and filled it out for the amount that J. C. Hamilton had deposited with him previously.

Q Did you solicit this employee to withdraw membership from Local #59?

A No, I did not, I didn't even talk to him prior to approaching him with Davy.

Q And at that particular point which you're with Mr. Lavenberg there, did you direct or did you in any way solicit Mr. Hamilton from joining Local #59?

A Did I interfere with him joining or stop him from joining.

Q He apparently had filed his initiation fee, did you go up to him and say to him, ask him not to join Local #59?

A No, I did not, I was just responding to a complaint that was presented to me by our superintendent --

MR. MULXERN: I ask that that be stricken.

JUDGE MILLER: It is non-responsive, I'll let it stand.

Q (By Mr. Smitas) What happened then after, was that the end of the incident with J. C. Hamilton?

A No, then we went down to the loading dock where John Sotiriou (phonetic) was and both Davey Lavenberg, Ken King and myself approached John Sotiriou and we asked him the same type of thing if he was pressured into joining the helper's organization and he was quite confused about the whole thing, he really didn't know what to do, he wanted to know whether he did something wrong or not, he was confused to the extent that he said that, you know, he was working for the company, he didn't want to do anything against the company and I assured him that he wasn't doing anything against the company, I just wanted to --

Q Did you say this?

A I believe so, yes, that I wanted to know if he was interested in joining the Helper's organization of his own free will and accord or if he wasn't or if he wanted his money back and I asked him if he wanted his money back and he said yes, he did. Thereupon, Davy, I believe said some words and gave him his money back.

Q Did you in any way, in any manner that you can recall, solicit his withdrawal from Local #59?

A If I'm not mistaken, that's the first time I ever saw John Sotirio and I in no way, shape or form --

Q Did Mr. King?

A No, not to my knowledge.

Q In any event, the conversation proceeded to a point where Mr. Lavenberg gave him his money back?

A Well, Mr. Lavenberg produced a check with a signature on it and filled in the name and amount and added his signature to it, and returned the previously initial deposit.

Q Was the initiation money the money returned at your request or the employee's request?

A It was returned through the request of the employee.

Q Go ahead, did anything else happen? Did anything else happen at this particular incident, at this time that you can remember?

A Well, John Sotiric went back to work doing whatever he was doing and Davy went on his business elsewhere and Kenny King and I continued on our business.

Q Did you in any way indicate that either one, that the relationship between these two employees and the company would change in any manner during this conversation?

A No, I did not.

Q Was any member of Local #6 or #16, any officer or agent of Local #6 or #16 present during either one of these two conversations?

A They were not.

Q Was the name of Local #6 or #16 mentioned during either one of these two conversations?

A It was not.

Q Now, directing your attention to on or about January 30 of 1975, I believe you, a meeting took place at the South Mall job site or office, would you tell us what happened on this occasion at that office?

A We met with Aldo Milossi (phonetic).

Q Who is we?

A Kenny King and myself.

Q After this conversation with Mr. Milossi (Phonetic), what happened?

A We brought in Allie Mohamad and J. C. Hamilton.

Q Do you recall what you said to Mr. Hamilton and Mr. Allie Mohamad at that point in time?

A Well, previous to this --

Q No, just at that point in time or is that conversation, why don't you just tell us what happened at this point.

A Alright, I asked J. C. Hamilton if he was, you see, they were going to join up through, they were there to sign up with Aldo Milossi (phonetic), is this what you're talking about, the meeting?

Q The meeting you had with Aldo Milossi?

A Alright, I had a meeting there, I met with Aldo Milossi, Kenny King and myself and this was pre-arranged really.

MR. MULKERN: I object, if Mr. Cordi wants to give the answers to different questions, I wish his counsel would ask those questions but in any event, I would ask that he be responsive to questions that he is asked.

JUDGE MILLER: I would appreciate it. I think it makes the record much easier to read.

Q (By Mr. Smitas) Was this meeting pre-arranged?

A Yes, it was.

Q When was it pre-arranged?

A I think maybe a couple days prior to this Mr. King had taken a survey of these people that were employed by us in an effort to find out if they were interested in being promoted and if they were interested in becoming mechanics and joining Local #6 or #16.

Q Okay, and then what happened?

A Kenny reported back to me that the, everyone that he had interviewed was unanimously in favor of being promoted and upgraded to a mechanic and joining either Local #6 or #16.

Q Had you been asked by Mr. Allie Mohamad or had anybody from your company been asked by Allie Mohamad to be upgraded previous to this meeting? If you know?

A I don't really know, I don't know, I was under the impression --

MR. MULKERN: I object.

JUDGE MILLER: I'll sustain the objection.

MR. CORDI: I don't know.

Q (By Mr. Smitas) Alright, well, tell us what happened, you met on that day?

A Well, after finding out from Kenny King that the, you know, these people wanted to be upgraded, through a conversation with Aldo Milossi, I asked him, you know, I asked him that we had some people that were interested in becoming mechanics that were qualified to become mechanics and if he would sign them up and he said he'd be happy to and, you know, we made some, you know, he'd come to the South Mall periodically and the next time I'm down there or whenever it's convenient let me know and I'll be there and we set up a meeting and met, I met with Aldo, Kenny King and myself in our office on the 137 level, north end and when J. C. Hamilton was ushered in, I asked J. C. if he was interested in becoming a mechanic, he said, yes, he was and I asked him if he was doing so under his own free will and accord and he told me that he was doing so under his own free will and accord and I believe Aldo asked him the same thing, you know and so I guess he gave Aldo a deposit and Aldo gave him a receipt and he went about his business. Then Allie Mohamad came in and Allie had some questions about, he was confused about the whole thing and really didn't understand it and Aldo had mentioned to him that he had recalled Allie asking him to become a mechanic previously at some previous time and they discussed that, then Allie wasn't too concerned about that, he was more concerned about, do I come in as top man or not. I asked explained to Allie he certainly was doing this particular type of work long enough and he has had enough years in the company to be experienced and qualified enough to do it and he certainly would be paid and classified as a mechanic, if that was the case, he said, fine. I asked him if he wanted to do it under his own free will and accord and he told me the same thing, that he was willing to do so.

Q Okay, is that the end of that meeting?

A Well, he gave Aldo Milossi a deposit and Aldo gave him a receipt and he went back to his business and I walked around a little bit with Aldo and talked a little bit with him and Aldo went his way and I went my way.

Q Okay, did you at any point in time, advise these employees that they had to become members of Local #6?

A No, I did not.

Q Did you, in any way, tell them that anything would happen to them concerning their relationship with the company in the event that they did not become members of Local #6?

A No, I did not.

Q Did there come a time where you had a meeting with Mr. Riggi from Local #16?

A Yes.

Q What happened there?

A Well, under the same circumstances through the interviews held by Kenny King, he informed me that --

Q Would you tell us why two meetings were arranged, one with business agent of Local #6 and one with business agent of Local #16?

A Some people, we felt that it was really expressed to us that those people that lived within the Schenectady jurisdiction would wanted to join the Schenectady local and those that were in the Albany jurisdiction wanted to join the Albany local, so therefore, Local #6 being the representative of the Albany area, we contacted Aldo Milossi and Local #16 being the representative of the Schenectady area, we contacted Mr. Vince Riggi.

Q Okay, now, do you recall when Mr. Riggi came onto the job site, was it in relation to Mr. Milossi's meeting?

A After Mr. Milossi's was on the job.

Q The complaint talks in terms of January 31st and February 7th of 1975, do you know whether or not those dates are correct?

A Sounds, yeah, it was approximately a week later.

Q Okay, were there two meetings involving Mr. Riggi?

A Yes, yes.

Q Can you recall the events of the first meeting?

A Yes, I met Mr. Riggi on the job site and we went into our office, Mr. Riggi, Ken King and myself. We asked John Segatto to bring in, Kenny gave John a list of names of who he wanted sent down to the office, and as the men came down --

MR. MULKERN: Excuse me, I didn't hear who gave John Segatto the list of names.

MR. CORDI: Ken King, Kenneth King.

MR. SMITAS: Go ahead.

MR. CORDI: I'd like a moment, I'd just like to compose myself.

JUDGE MILLER: Let's take a couple minute break.

(Off the record)

JUDGE MILLER: On the record.

Q (By Mr. Smitas) Mr. Cordi, you were talking about, what were we talking about?

JUDGE MILLER: You were talking about the meeting with Mr. Riggi on January 31st, yes.

Q (By Mr. Smitas) Your first meeting where Mr. Riggi was present

A Alright, again, it was held in the, we convened in the office at the job site, Mr. King, myself and Mr. Riggi.

Q Now, prior to this meeting with Mr. Riggi, did you sign the local collective bargaining agreement?

A Yes, I did.

Q Go ahead.

A We had previously informed Mr. Riggi that we wanted to promote certain employees that had worked for us and made arrangements to meet him at the South Mall and did so and called in the employees and they came in, John Segatto came in, Dominick Marotta, Dominick Coppola and they went through the processes.

Q Were they all there at the same time?

A No, I think they staggered in and maybe some of them might have been there together. I know that Sotiriou Evangelidis and Psarras, I believe, were there at the same time.

Q Did you say anything to the men when they came in?

A Yes, I again, asked them for my own information, if they were doing this basically, confirming what Mr. King had told me, if they were doing this of their own free will and accord and everyone of them responded in the affirmative and they proceeded to sign up. A few situations there were Psarras asked Mr. Riggi to cash his payroll check and Mr. Riggi didn't have enough money to do so and he asked me to cash it and I told him I didn't want to cash it.

Q Who asked you to cash it?

A Mr. Psarras, then he asked me if I would loan him fifty dollars and I did so and then John Sotirio asked me if I would loan him fifty dollars and I did so, this was a common practice.

Q Did you loan the employees money in the past?

A Yes, I said it was a common practice, whenever men were out of town and they were short, I always loaned them money, or whatever the case may be, whenever they were short, I normally obliged them.

Q Did you tell any of these employees that they had to join Local #6 or #16, in this case, Local #16?

A No, I did not.

Q Did you tell any of these employees or even mention Local #59 in any way, shape or form?

A No, I did not.

Q Is it unusual for a business agent to come on your job site?

A Well, in Aldo Molassi's case, it's not be[illegible] it's in his jurisdiction and he's there sometimes two, maybe three times a week, he's there constantly, we are not the only ones working on that job. I think they had something like 150 masons, I don't know the number, but there was a tremendous number of masons that were working on that job and a tremendous number of contractors that were working on that job so it was common. It was not common for Mr. Riggi to do so but Mr. Riggi had volunteered to do so. He felt, in fact when I first talked to him about signing these men up, he said, you know, send them down to the office and I'll take care of them, no, on second thought he says, you've got a number of them there, maybe it'd be easier for me to drop down on the job and, you know, make it easier on yourself, plus the fact that I think he was interested in seeing the South Mall, it gave him an excuse to come down there without, you know, impossing upon, you know, making Aldo think that he was moving in on his territory, plus the fact that Vince had more of his members working there under our organization than Aldo did.

Q Is it unusual for you to conduct union business on the job site?

A I try not to but it's common practice.

Q Okay. Now, on February, a week later around February

7th, was there another meeting dealing with Mr. Riggi?

A I think a week after the first meeting, approximately a week after the first meeting, some of the men, I believe, inferred to Mr. Riggi that they would have the remainder of the initiation fee the following week and he made it a point to come down.

Q And at that particular point in time were you present when Mr. Riggi talked to these men?

A I was on the job site and I was in the office at the time but I don't think I paid too much attention to what was going on.

Q Do you remember talking, was that the end of the event with Mr. Riggi, the second occasion? On February 7th?

A On the second occasion, well, we had some discussions, I don't really recall at this time, maybe a year ago I did, but there was some discussions, you know, normal job business.

Q Did you tell the employees, these employees that they had to join Local #16?

A No, I did not.

Q Did you tell the employees that they had to pay their initiation fee in Local #16?

A No, I did not.

Q Did you tell, did you mention Local #59 in any way, shape or form?

A No, I did not.

Q Did any of the employees make any reference to Local #59?

A I don't recall.

Q Did you, at this point in time, tell or imply in any manner that an employee's wages, hours or working conditions would change if they did not join Local #6 or #16?

A No, I did not.

Q Did you advise these employees that their working conditions, hours or terms of conditions would change if they continued their membership in Local #59?

A No, I did not.

Q Now, on February 27, 1975, the complaint reads that respondent --

A Excuse me, excuse, may I have that date again.

Q On or about February 27, 1975, respondent, Desco, through its officers, supervisor and agent, Joseph Cordi, at the job site, that's the South Mall, threatened its employees in a unit described with discharge unless they joined respondent Local #16. Now did you ever threaten an employee with this charge, if they did not join Local #16?

A No, I did not.

Q Now, did you in any way imply that an employee on this particular occasion, would in any way change his employment, hours or terms or conditions of employment if they did not join respondent Local #16?

A No, I did not.

Q Now, there was some conversation earlier, which I think you heard, regarding discussions about twenty dollars, a couple of the employees. Do you remember those conversations?

A Yes, I do.

Q Alright, would you, to the best of your recollection, tell us what happened and who they were with?

A On that occasion, I had an occasion to go to the job that day because Kenny King's father had died and he returned to Cleveland and I took the payroll down to the South Mall for him and as I was distributing the payroll, I had talked with a Constantine Psarras and --

Q Let me just stop you at that point. There was a comment made, so that we can get the connotation and the setting properly, there was something about a check and you dangling a check. Was that in the form of a joke?

A No, definately not, I don't, there was nothing humorous or comical perpetuated on that day in any way, shape or form.

Q Alright, what happened with Constantine --

A In fact, it was quite a serious day, you know, as I said, Kenny's father had died, he had returned to Cleveland, we were extremely busy at that time of the year, I don't normally provide, I don't normally come on jobs for servicing jobs, my duties are more administrative. We have superintendents and foreman for this type of thing, and I was there and while I was there I was distributing checks and I assure you that there was no chicanery' (phonetic) or anything of that nature. I don't even remember a man being on his knees, I do know that the man was isolated from the other workers and we did have him on a base grinding operation or edge grinding operation because he couldn't get along with the rest of the workers or he didn't want him around.

Q Alright, go ahead.

A I gave Constantino Psarras his check and I think John Sotiriou (phonetic) was in the same vicinity moving material around and I just inquired for my own information what their status was with the union since we do have union security clauses I was a little bitconcerned on a job of that nature with more shop stewarts and business agents walking around, I didn't want to strike against this because we were employing non-union people or people --

MR. MULKERN: Your Honor, I object. Will the witness please say what he said and what the other individuals said.

JUDGE MILLER: I know you like to explain what was going on but the counsel has asked you a question which is capable of a much more concise answer and I really think it would help us all to understand what was happening if you would just answer the question.

MR. CORDI: Okay.

Q (By Mr. Smitas) Would you tell us what happened, Mr.

Cordi?

A I asked, in the essence of brevity, I asked all three of them what their status was. This was Evangelidis, Sotiriou and Psarras.

Q What did they say? Let's take one at a time, okay, were they all together at the same spot or were they, you didn't talk to them as a group did you?

A Yes, eventually the three of them, in fact I met with the first person I ran into was Psarras and I think immediately after I saw Psarras Sotiriou was walking by and I stopped him and as I stopped him Evangelidis also was walking by and I stopped him and I asked them what their status was pertaining to the Local 496 situation.

Q Go ahead.

A They had explained to me that they had gone down to Mr. Riggi's office and tried to give him some money and he wouldn't accept it. Shortly thereafter I said to him I was concerned, I think there was a misinterpretation of what my attitude was.

MR. MULKERN: I object.

JUDGE MILLER: I'll sustain the objection.

Q (By Mr. Smitas) Alright, would you tell us what was said, if you would?

A I informed them that, they had told, like I know Evangelidi's had told me that he had expenses and he couldn't afford it, that he didn't have the money and so on and so forth. I tried to explain to him the best way I possibly could that it was a union job and that if they were found to be out of sorts with a union of one sort or another, there might be trouble and they, you know, they might not be allowed to work because of non union status not that it mattered to me in any way, shape or form but I'm sure that there might be some problem with a business agent of one union or another.

Q Did you tell them this?

A I don't think those were my exact words but I think it was, this was the point that I was trying to convey.

MR. MULKERN: I object once again. The witness has just testified that those weren't his words, what were his words?

JUDGE MILLER: Well, look --

MR. MULKERN: This supposedly is a crucial piece of testimony and I would appreciate it if the witness would start telling us what his mental processes were what he thinks they were and would tell us what he said!

MR. SMITAS: I'm not sure that he was doing that, Mr. Examiner and at this particular point I was trying to get it straight, okay, for the record, whether or not this was the conversation that was being conveyed or a mental process.

JUDGE MILLER: I realize that now I'm going to say it, I hope for the last time to the witness, what we need are as best as you can recall, the exact words of conversations.

Now I know this was fifteen months or so ago and you're not going to remember every word just as it was said. I don't expect a witness to at this period of time but I do want what was said and not what was thought, not what you suspected not what you thought other people believed but just as best as you recall what you said and what they said.

Q (By Mr. Smitas) Mr. Cordi, what you've just testified to, was this the conversation that took place between you and the employees or was this an operation of your mind? To the best of your recollection, is this what you told these people and explained to these people?

A I basically explained to them that this wasn't kid stuff that this was a union job, if we didn't employ union people there may be trouble and that we were required to provide union people on this job.

Q Alright, at this point in time, did you know that anyone of these three people or did they tell you that they had made application of Local #59 of the Helper's Union?

A No, they did not.

Q Did Local #59, at that point in time, tell you that they were, these people were members of their local?

A No, they did not.

Q Did you refer to Local #59 at that point in time to these three men?

A No, I did not.

Q Did you in any way say to them that if they did not join Local #59 they would be fired, or threatened or changed or conditions of employment?

A No, I did not.

Q By virtue of your membership in the NADAF (phonetic) organization, are you bound by the terms and conditions, what is your relationship between Local unions and local unions of the Bricklayers, Masons, Plasterers, International Union of America and the International Brotherhood of Painters and Allied Trades under the operations of the tri-party agreement?

MR. MULKERN: I object, the document speaks, it speaks itself.

JUDGE MILLER: I seem to think it does.

MR. SMITAS: It does, right.

JUDGE MILLER: I'll sustain the objection.

Q (By Mr. Smitas) Now, under the NADAF, are you required to sign an agreement in each area or each local of the painters and masons unions under this NADAF agreement?

MR. MULKERN: I object, the document either states for itself --

MR. SMITAS: Does the document state --

MR. MULKERN: Now, I object.

MR. SMITAS: I'll withdraw my question.

JUDGE MILLER: Alright.

Q (By Mr. Smitas) Does the Employer's Exhibit Number 1 explain in any way how your relationship with the local unions as to whether or not you must sign their agreement?

A No, it does not.

Q Are you required or have you been required to sign any local agreements being a signatory to this agreement?

A No, we are not.

MR. MULKERN: I object, now I move that that answer be stricken. I see no relevance to it, if, once again, I reinterate my objection, if that document stands for anything, it obviously speaks for itself.

JUDGE MILLER: Alright, overruled, the question and answer will stand.

Q (By Mr. Smitas) You did, however, sign a local agreement on or about the 27th of January 1975?

A The 30th of January.

Q Was there a reason why you signed it? Why did you sign that agreement if it wasn't necessary?

A I signed it as a, sort of a private condition to Mr. Molassi to, he was sort of confused and I was confused as to the coverage of the welfare and pension. I think there was some stipulation go around pertaining to that he needed a signature to accept funds into welfare and pension fringe benefit programs and he was concerned about that and it was specifically understood that that was the purpose of the signature on that agreement.

Q Now, on December 12, 1974, did anyone from local, December 12, now, 1974, did anybody from Local #59 request you to bargain collectively with respect to rates of pay, wages, hours and employment or terms of conditions of employment?

A December 12?

Q December the 12th.

JUDGE MILLER: Let me ask a question of the General Counsel, that's the date you set out in your complaint, is there any significance to that date? I don't recall any evidence or anything happening on that date?

MR. SMITAS: It's the date the contracts were sent, the letter in the contracts asking them to sign.

Q (By Mr. Smitas) I show you what as been accepted as General Counsel's exhibit number 13, what day did you receive that?

A December 13, 1974 as I understand.

Q Okay, now, was there some conversation that preceded this letter that you can recall?

A No.

Q Now, Mr. Lavenberg testified that he called you after, some time after this letter was received by you?

A Yes.

Q During that conversation with Mr. Lavenberg, did you tell him that you were going to sign the agreement with the, or promise to sign the agreement and return it to him?

A No, I did not.

MR. MULKERN: Your Honor, I object to the form of the question, if it's not a rebuttal question. Mr. Lavenberg did not say that Mr. Cordi said that he was going to sign the contract.

MR. SMITAS: Oh, I'm sorry, I remember in this part of my notes that if there's no harm if it isn't.

JUDGE MILLER: Alright, I'm going to overrule the objection, the answer will stand.

Q (By Mr. Smitas) Did there come an occasion when you met with or you received or had a telephone conversation with an international representative of the Helper's Union?

A Yes.

Q How did this, did you have a meeting with them?

A As a result of the phone conversation.

Q Okay, why don't you tell us what the first contact was that you had with this international, who was the international representative?

A Mr. Gerald Bombassaro.

Q Who called who?

A Mr. Bombassaro called me I believe it was on February 12, 1975.

Q Okay, and would you tell us what you can recall about that conversation?

A Yes, I received a phone call from Mr. Bombassaro and he had informed me that he was going to be up in the capital district area approximately on February 18, 1975 and if I would be available to meet with him. I asked him what it was about and, oh, I think before that I informed him that I was going to be in Poughkeepsie on that day, in the earlier part of the day but I would be happy to meet with him after we return from Poughkeepsie which might possibly be later on in the day and I asked him what it would be about and he asked me to, if I would, you know, would be about signing his unions agreement. I had informed him at that time that we had, you know, we had been exposed to everybody in the world claiming this particular type of work and that we had already assigned this work to the masons and the BAC and the PAT through being signatory to the NADAF agreement, however, I would still be willing to meet with him.

Q Okay, was a meeting arranged?

A It wasn't definately arranged. He informed me he would be, you know, in the area on the 18th and I told him that when we came back from Poughkeepsie, we'd be available.

Q Ultimately, did you meet with Mr. Bombassaro that day?

A Yes, on the 18th after returning from Poughkeepsie late in the afternoon we saw Mr. Bombassaro, Mr. Lavenberg at the South Mall Health Lab, Health Department Laboratory area conferring with Mr. Mohamad.

Q Would you tell us what happened when you finally met? Was it a length conversation?

A Yes, it was considerably lengthy, we talked for quite a period of time.

Q Can you tell us, first of all, I don't believe that, can you tell us the exact words that they stated?

A I can try to but it's going to be --

JUDGE MILLER: I don't think we need the whole conversation in this thing, let's cut to the jest of it.

Q (By Mr. Smitas) Okay, would you tell us, basically, what was stated at this occasion?

A Gerry had requested that I want to know why I didn't sign his agreement for the Helper's and I explained to him that we had already committed ourself, we had assigned this work through the NADAF agreement being signatory to the NADAF agreement to the masons and painters. He couldn't understand why that due to the fact that these men had been doing this work previously that why they couldn't continue to do this work and I informed him that that was the problem. The problem was that they were not doing just helpers work, that they were doing total systems and the total part, the total operation and that everybody was claiming this particular type of work and as helpers utilizing the trowel which they had to do, they would be violating the masons agreement so we would be constantly in conflict with the masons business agent as applying the dressing with the paint brushes and rollers they would be contradicting the painters agreements and we'd be in constant conflict with the painters, but I just didn't want any more of that, I'd had enough of that. We were interested in going out there and doing our job, putting the team out there, doing our work, getting our work done and eliminating all of this confusion and conflict and everybody claiming the work. We did discuss the points of the technologies and techniques of the industry changing considerably, they were considerably different today than they were a period of time ago and that no longer is the helper that involved in the work today. I did explain the difference that today now they have, twenty years ago when a helper was predominant in his type of work or not this type of work but in the industry they had mud-set (phonetic) tile and they had the cementious terrazzo (phonetic) and this type of thing, they had more to do, more, they were more involved in that type thing. Today they have ready-set tile where the tile is all pre-grouted and the only thing that the helper can do in that situation is open up the box and the rest of it is done by the mechanic. I explained to him that our painters do their own mixing that they handle their own material. This type of operation now doesn't require that much handling, on a big job, yes, on a small job, which is more common to us, a two to three to four to five man job, you're not handling that much material. The things that we are doing today are considerably different than they were five years ago and the things that we'll be doing five years from today will be considerably different than we're doing today. I explained to him that since taking over the organization we've introduced many new techniques and methods and machinery and equipment, streamlined the operation considerably.

(A brief break was taken to change tapes.)

JUDGE MILLER: On the record.

Q (By Mr. Smitas) Mr. Cordi, you were discussing a conversation that you had with Mr. Bombassaro, business agent for Local #59, Mr. Lavenberg, during this conversation, did you take issue with Mr. Bombassaro upon the issue as to whether or not employees could, that grinding was grinding and carrying was carrying, was that brought into the conversation, I believe you testified briefly on that.

A Yes, we had different ideas about this. Gerry couldn't understand why that helpers had put in cement terrazzo and did grinding work previously, he felt that just the material had changed and grinding was grinding and carrying was carrying, as you say, and as he reinterated previously in his testimony. I spent a considerable amount of time trying to convince him that this was not so on the thin set operations.

That it varied considerably today, that the installation of an epoxy terrazzo flooring wasn't even similar to the installation of a cementious-terrazzo (phonetic) flooring. There wasn't a difference between one manufacturer and another manufacturer. I explained to him that we did handle the Desco, which he called Desco & McNaughton Brooks (phonetic) are one in the same company, which is the Todco (phonetic) line. We also handle the Hobolite (phonetic) line, we also handle the magnasite (phonetic) flooring which is, and the Hobolite (phonetic) line which is an oxichloride type of flooring. We also handle the Crossfield (phonetic) product.

JUDGE MILLER: Do we need all this specificity, Mr. Smitas?

MR. SMITAS: No, but go ahead.

MR. CORDI: I mean I'm not going to be able, if I can't answer the question without being pressured --

MR. SMITAS: Well, apparently, he feels that it is necessary to get into some parts.

MR. CORDI: I do feel that this particular type of industry is so new that there is such a lack of information --

JUDGE MILLER: Yeah, but you have explained the difference in the industry and at a different point in your testimony, now you're repeating that same testimony that, in the conversation with Mr. Bombassaro. Now, the record doesn't need to have it repeated again.

Q (By Mr. Smitas) Alright, let me ask you this, if I may. Did you advise Mr. Bombassaro that the members of his local, were in fact, doing work that was claimed by Local #6 and #16 and the masons international?

A Yes, I did and I also informed them the fact that this was where we got considerable harrassment, not from his local, we did get some, in fact, the harrassment we got from his local was really minimum but it was the idea that helper's were using a trowel, that the masons business agent threatened to bring us up on charges and said that we were violating the agreement, that the helpers were putting on dressing and the painters business agent on that job claimed that work and said that, you know, we were violating our agreement with them and my point was that the harrassment that we were trying to evade was the harrassment from all the unions claiming this. In fact, the harrassment that we got, harrassment you get from every business agent, this is part of the game. It's like, you know, telling a grease monkey that he is not going to get grease on his hands.

Q Okay, so the record isn't deprieved with alot of repetition, you continued along this line and this type of thinking and thought, is that correct?

A That's correct.

Q And if I understand correctly, there was a time on the job site where Allie Mohamad came into the conversation, he was there and if I remembered it correctly, the testimony was that you said something to a bunch of employees to the effect don't we get along great. How did that come into the conversation? How did these employees of this discussion with the employees come into the conversation if you can recall?

A Well, after talking for a considerable period of time with Gerry and Dave, it was now 4:30 and the men had finished their day's work and now were moving through their change room and so on and so forth and they saw us talking and they stopped by to chit-chat and see what was going on and get into the conversation. At that period of time we were talking something of harrassment or Davy, I explained in a kidding way, so to speak, said, you know, how Davy spent more time on our Skidmore job than I did and knew more about our Skidmore job than I did, you know, this type of thing and you know, there was no need for this situation in our company and these men were there and I says, these guys will tell you, we're a good organization, we're one big happy family and as these guys heard me talk this way, ask them yourself, we're one big happy family, don't we get along fine and this type of thing.

Q Alright, were you attempting in this discussion with these people and bringing them into the discussion to dissuade or persuade these people to leave Local #59?

A No, I was not.

MR. MULKERN: I object.

JUDGE MILLER: Overruled.

Q (By Mr. Smitas) Were you in any way threatening these people that if they continued their membership in Local #59 that something would happen then in their employment?

A No, I was not.

MR. SMITAS: I know it was leading, Mr. Examiner, but it was the only way I could do it without going through the whole thing.

JUDGE MILLER: I allowed it.

Q (By Mr. Smitas) Now, did Allie Mohamad ever tell you that he was business agent on the Health Lab, or not business agent, stewart on the Health Lab job?

A No, he did not.

Q Did anybody ever tell you that they were acting stewart for Local #59 on the job?

A No, they never did on any job, I'll wrap that up by saying the only job that we ever had a stewart on, that I know of, was the Albany South Mall job and that was one appointed by Local #16, or Local #6, the only stewart that I ever knew of in the duration of time that I had anything to do with the company, on any job whatsoever.

Q Now, did you from, when you took over the operations in January 27 of 1972 until --

A I took over in January 8, 1973.

Q Oh, okay, 1973, from that time to this conversation that you had with Mr. Bombassaro or, no, up to December 13 of 1975 were you ever approached by the union asking to sign a contract?

A I think you mean December 13, 1974?

Q From the time of the, arbitration which has been fixed now?

A November, 1973 to December, 1974.

Q Right, did anybody approach you to sign a contract?

A No, they did not.

Q Did anybody ask you for recognition as bargaining, exclusive bargaining representative of Helper's?

A No.

Q Now, on March 31, 1975, employees went out on strike, isn't that correct?

A Yes.

Q What employees do you know of that were on the picket line or on strike?

A That had worked for us?

Q Yes.

A Allie Mohamad and Dimitrious Evangelidis.

Q Those were the only two that you knew about that were on strike?

A That were employed by us at the time, everyone else continued to work on all jobs.

MR. MULKERN: Your Honor, I object, the statement was unresponsive.

JUDGE MILLER: No, overruled, I'll let the answer stand.

Q (By Mr. Smitas) Mr. Cordi, did any of the employees ever tell you when and if they filed application for membership in Local #59?

A No, they did not.

Q Did the union ever advise you that certain employees became members of Local #59?

A No, they did not.

Q Did you ever deny employment to employees after the strike if they came to the job site and look for employment?

A No, we did not.

Q As a matter of fact, didn't you re-employ some employees that came back after the strike was over?

A Every one that wanted to.

Q Now, did anybody from Local #6 or #16 ever ask you to fire or change the working conditions of any employee because they were not members of Local #6 or #16?

A No.

MR. SMITAS: I have no further questions.

JUDGE MILLER: Mr. Tocci, any questions?

MR. TOCCI: Yes, I do, sir.

FURTHER DIRECT EXAMINATION

Q (By Mr. Tocci) Mr. Cordi, in, when did you enter into the NADAF, I forgot.

A January, 1975.

Q '75, and at that time did you have people in certain classifications working under that agreement?

A Prior to joining NADAF?

Q No, I mean at the time when you, right when you signed the NADAF agreement and right after that went into effect, were there people in your employ who were covered under it's terms and classifications?

A Yes.

Q Who were they? What job title did they have?

A Chemical product workers and improvers.

Q So there are two designations, chemical product workers and improvers?

A And improvers, yes.

Q Was an improver sort of someone in a semi-apprenticeship stage?

A Yes.

Q And then after that they went through this period they became a chemical products worker?

A Yes.

Q And who would make the determination as to whether someone working under the NADAF agreement was an improver or a chemical products worker?

A Contractor.

Q Contractor, and would it be reflected in the union book that that person carried?

A Yes, it would.

Q In what way.

A Well, chemical product worker would have CPW added to his book along with all the other, whatever else he was qualified for and the improver would have improver designated in his book.

Q And these chemical product workers under this NADAF agreement were members of the bricklayers?

A The terrazzo worker's union.

Q Now, you have testified to and other people have testified to this meeting with Mr. Molassi at the job site in January of '75?

A Yes.

Q You were there with Mr. King and two of your employees, Allie Mohamad and J. C. Hamilton, correct?

A Yes.

Q You heard, at the time that Allie Mohamad was at this meeting that I just talked about, what was his classification with the company, in other words, where did he fall in what pattern, what type of worker? Allie Mohamad, was he, what was his, the nature of his work?

A He worked with the people on the seamless floors and decks operation.

Q And was, at this time --

MR. MULKERN: Excuse me, I really don't think that Mr. Cordi was responsive to that question.

JUDGE MILLER: I think he was, overruled.

Q (By Mr. Tocci) And at this time of this meeting with Mr. Molassi, what was the purpose, I'll withdraw that. Were you contemplating a change in status of Mr. Mohamad in your work force?

A We were promoting him to a chemical product worker, mechanic.

Q Was that the workers covered under the bricklayers agreement?

A Yes, it was.

Q Was that what the purpose of his meeting with Mr. Molassi was to join the union at that time?

A Yes.

MR. MULKERN: I would at this point place an objection to this type of leading question. I believe that Mr. Tocci is asking questions on direct examination that those questions should be of a non-leading nature.

JUDGE MILLER: I think you're technically correct, this is not an adverse witness.

Q (By Mr. Tocci) Now, Mr. Hamilton was at this meeting also?

A Yes.

Q Was he a member of Local #59 at the time of this meeting?

A No, he was not.

Q Do you know whether he had ever been a member of Local #59?

A He had never been a member of Local #59.

Q But he was at this meeting with Mr. Molassi?

A Yes, he was.

Q Now, to your knowledge at this meeting, did Mr. Molassi sign up any of your employees either by way of taking an initiation fee or a down payment on an initiation fee?

A Yes.

Q Of which employees?

A J. C. Hamilton and Allie Mohamad.

Q Prior to his taking their initiation fees, did Mr. Molassi make any inquiry of you as to these men?

A Yes, he asked me if they were qualified to do this work.

Q What was your response?

A I told him that Mohamad Allie or Allie Mohamad had been doing it for numerous years and J. C. Hamilton came highly recommended to us from Gellin (phonetic) Company in Cleveland, Ohio and from I've observed of him in the last, I think he had been with us three or four months previous to this, in the three or four months previous to this Kenny King had reported to me that he was more than satisfied with the mans work.

Q Did you make any indication to Mr. Molassi as to what level you were certifying the man?

A Yes, I did.

Q. What indication did you make at this meeting?

A Full mechanic.

Q Pardon?

A Full mechanic.

Q Now, did you hear the conversation that Mr. Molassi had with these two men at this meeting?

A Some of it.

Q Can you tell me the part that you did hear?

A I already did, do you want me to repeat it.

Q Well, I'd like you to cause I, well, I don't want to lead you but I'd like you to.

A Mr. Molassi did ask them if they wanted to join of their own free will and accord. He did talk to Allie Mohamad about previously applying to him, you know, he asked Allie, didn't you previously apply to me for, didn't you want to become a journeyman awhile back. I think it was a year ago or some thing to that effect, this type of thing.

Q Okay, now it comes back to me, you did testify as to that and there's no need to repeat it. Now, there's also been as you've heard testimony of as to a meeting with Vince Riggi of Local #16 at the job site with some of your employees, yourself and Mr. King, is that correct, do you remember those meetings?

A Yes.

Q At these meetings, did Mr. Riggi make any inquiries of you as to the --

MR. MULKERN: I object, your Honor, really I think that these questions are leading.

MR. TOCCI: I'm only asking if he made any inquiries, I'm not --

JUDGE MILLER: I don't think that's a leading question, overruled.

Q (By Mr. Tocci) Did he make any inquiries of you as to these men and their work?

A Yes, he did.

Q I'm now specifically referring to the people that were there, Coppola, Sotiriou, Evangelidis, Psarras, Marotta, Segatto, what did he inquire of you?

A You want me to take them one at a time?

Q Well, just generally rather than take --

A He asked me if they were qualified to do the work, our specific type of work and qualified to receive the designation that we had requested them to receive and we responded accordingly.

Q What designation did you, if any, did you indicate to Mr. Riggi for these individuals?

A On the basis of Dominick Coppola, we recommended that he be designated as a chemical product worker, full mechanic on the basis that he'd been doing it for numerous years again with the company and was very well qualified and we were very satisfied with the man. John Segatto, the same thing, numerous years with the company, he had been doing it right along and trained, in fact, John Segatto had trained many people that were doing it so we recommended that he get the CPW and full mechanic status.

Q How about Sotiriou and Evangelidis?

A I'll get to them. Marotta, we recommended full mechanic status on the basis that he'd been with the company numerous years and again, well qualified. Sotiriou, Evangelidis, and Psarras we recommended improvers rates, the improver designation cause they did not have the background or experience at this time, still didn't have, you know, it'd be a long time before they, they were freshly, probationary employees, we were not, did not expose them to too much training until --

Q Now, did you hear any conversations that Mr. Riggi had with these men while you were there?

A Well, he asked them if they were willing to join on their own, you know, if this was their desire to do so and was on their own accord and everyone that I knew of responded in the affirmative, that would be the main conversation. I guess the rest of the most would be chit-chat and normal conversation.

Q Now, after you certified these people, as you have indicated, did they receive a corresponding increase in their hourly wage rate?

A Yes, they did.

MR. TOCCI: I have no further questions.

JUDGE MILLER: Cross examine.

MR. MULKERN: I'd just like a minute to make a phone call.

JUDGE MILLER: Alright, let's just keep it to that, stretch your legs, take a puff of a cigarette. Let's go off the record.

(Off the record)

JUDGE MILLER: On the record.

CROSS EXAMINATION

Q (By Mr.Mulkern) Mr. Cordi, when did you first make application to this NADAF group?

A Well, as I testified before, I was under the impression--

Q I'm just asking you when you made application, Mr. Cordi?

A I thought we were part of the NADAF group but when I found out we weren't, I applied --

Q Well, actually when did you apply?

A We were in the NADAF organization.

Q Mr. Cordi, I'm just asking you, when did you apply for membership in the NADAF organization?

A January 1975, it was a re-application.

Q And so you applied for membership, it was a re-application?

A The company previously was a member of NADAF.

Q Do you have any record of its membership?

A Your documents show it, your exhibits showed it, the company was a member of NADAF.

Q Well, why did you, if that was membership in NADAF, why did you feel it was necessary to re-apply?

A Cause during the transition, someplace along the line, the dues apparently weren't paid and we were dropped as members, unbeknown to me, and when I found this out, we re-instated ourselves in January of 1975.

Q So, Mr. Cordi, when did you make application to NADAF?

MR. SMITAS: Mr. Examiner, he answered that. I think it was as complete as he could possibly answer.

JUDGE MILLER: I'll allow him to ask it one more time.

Q (By Mr. Mulkern) When did you make application for NADAF, a specific date if you have it?

A When I found out that we were no longer in good standing and re-applied in January, reinstated ourselves in January of 1975.

Q Do you know when in January, you made out that application, when specifically in January?

A That's as specific as I can get, January 1975.

Q Upon application, did you become a member of NADAF or did you have to be accepted into membership?

A Our situation had to be reviewed.

Q When were you accepted into membership in NADAF?

A I don't know.

Q Do you have records that would indicate when you were accepted into NADAF?

A I'm under the impression after review it meant that we were accepted on the date of application.

Q Do you have a letter that indicates when you were accepted into NADAF, did NADAF correspond with you to tell you when you were accepted?

A I believe we do.

MR. MULKERN: I would like to see that letter.

JUDGE MILLER: Do you have a file with you, Mr. Cordi?

MR. CORDI: I think we submitted it at the previous hearing.

MR. SMITAS: I'm looking, Mr. Mulkeen.

MR. CORDI: I think this is our acknowledgment.

JUDGE MILLER: For the record, the witness has something which he's described as a certificate.

MR. CORDI: Certifying that Desco Vitro Glaze of Schenectady, having satisfied this trade group as among its personal trained technical consultants and skilled craftsmen --

JUDGE MILLER: You don't have to read the whole thing unless we want to put it into the record.

MR. MULKERN: I believe the, well, whether it was mistaken or not, I believe the term that he used was upgraded as it shows in my notes.

JUDGE MILLER: Alright, re-ask your question.

MR. MULKERN: No, to the extent that everyone else understood somewhat different, I'll withdraw the question.

Q (By Mr. Mulkern) Now, Mr. Cordi, when did you first learn that Mr. Marotta was a member of Local #59?

A I don't really know.

Q Was it in 1975 or 1973?

A I don't know.

Q When did you first learn that Mr. Segatto was a member of Local #59?

A I will try to be as specific as possible, our organization in the re-organization process, the flooring operation was handled by Ken King, supervisor of the flooring operation, I did not direct men, I did not supervise men, I administered to superintendents who reported back to me, I was not familar with the total working operation of the field. We had George Allen supervised our painting operation, we had a coning (phonetic) operation supervisor, we had a flooring operations supervisor. I don't know when, there's 60 some employees there that you're talking about and you're asking me their affiliations with unions, I could care less if they belonged to any union.

Q So you didn't know that anyone belonged to Local #59 at all?

A I had no idea, I won't say that, I didn't say I didn't know, I didn't know when they first became affiliated. These people were with the company before I came with the company, the one's that you mentioned, so I have no way of knowing when they first became affiliated with it or when I first knew when they were affiliated with it, it's part of processes.

Q On, let's say on December 1, 1974, did you know that Dominick Marotta was a member of Local #59?

A Well, I was under the impression that he was, I'd never reviewed his book or anything, I was under the impression he was.

Q How about John Segatto?

A Well, John had come to me previously and asked me to become upgraded.

Q You realized that he was a member of Local #59?

A Yes.

Q How about Dominick Coppola?

A I'd have to assume that I probably was aware of it.

JUDGE MILLER: Mr. Mulkern, could you back off from the witness a little bit, you're bobbing and weaving like the other Mohamad Allie and I'm sure it's disconcerting to the witness.

MR. MULKERN: I'm sorry.

322

MR. CORDI: It sure is.

Q (By Mr. Mulkern) I don't mean to be disconcerting, I assure you. It's merely a nervous habit. I think I was asking you about Mr. Allie, Allie Mohamad, I'm sorry.

A I have that same problem.

Q I guess we all do. Did you realize in December of 1974 that he was a member of Local #59?

A I probably was aware of it.

Q Who's Aldo Molassi?

A He's a business agent, former business agent of Local #6.

Q How about Mr. Riggi?

A A former business agent of Local #16.

Q They were business agents, both of them business agents in January and February of 1975?

A Yes.

Q You just denied that.

A I denied that they were business agents?

MR. SMITAS: You didn't deny it, formal pleadings.

JUDGE MILLER: It's just a formal matter, Mr. Cordi, don't worry about it.

Q (By Mr. Mulkern) Concerning that January 30th meeting with Mr. Molassi at which Mr. Mohamad came down and I guess Mr. Hamilton came down at some point too, where did you originally meet Mr. Molassi?

Word for word, I don't remember word for word, there's no way I could remember word for word.

Q Now, directing your attention to, I believe it was February 18, in any event, the day that Mr. Bombassaro visited the job site to speak with you, directing your attention to only that part of the conversation where he called the or you called the three employees came over, Mohamad, Marotta and Segatto, and you said to them, I believe you said or testified on direct examination, "aren't we one big happy family." What did you say after you said that? After you asked them that, what was the next question you asked?

A I'd have to get into the frame of what was leading up to that but I think we were discussing, I was trying to point out that the company wasn't having any problems with its men, the men were really being treated well and they were satisfied working for the company and this type of thing.

Q Well, what did you say to the men after you said, "aren't we one big happy family?"

A To be specific, you're putting me on the spot, I don't remember.

Q Didn't you ask them, point out Lavenberg and say, "what did this man, a Local #59 ever do for you?"

A You know, it all depends on how you're taking it. If you take it out of context and isolate something without knowing the full generalities of it, I honestly don't remember.

AFTERNOON SESSION

1:20 p.m.

JUDGE CONSTANTINE: On the record.

Mr. Cordi, do you want to come forward?

JOSEPH CORDI

was recalled as a witness by and on behalf of the General Counsel and, having been previously sworn, was examined and testified as follows:

JUDGE CONSTANTINE: Did you give your name and address? I don't recall.

THE WITNESS: No.

JUDGE CONSTANTINE: All right, will you do that please?

THE WITNESS: My name is Joseph Cordi. I reside at 14 Mayflower Drive, Schenectady, New York.

DIRECT EXAMINATION

Q (By Mr. Sheridan) Mr. Cordi, what is your position with Desco Vitro-Glaze?

A I'm President of the Company.

Q And how long have you been President?

A Since January 1973.

MR. SHERIDAN: I request permission to question Mr. Cordi under Rule 43-B of the Federal Rules of Civil Procedure?

JUDGE CONSTANTINE: Any objection?

MR. TOCCI: No objection, Your Honor.

MR. SMITAS: No objection.

JUDGE CONSTANTINE: All right, go ahead.

Q (By Mr. Sheridan) All right, Mr. Cordi, when you took over Desco Vitro-Glaze --

JUDGE CONSTANTINE: Let me say this. Just because you are putting him on as an adverse witness, doesn't mean because he gives you some bad answers that you can ask me to disregard them. I'm going to take a look at his whole testimony, good as well as bad. You take some risk in putting him on as your witness. I want to make that clear.

In a couple of cases where --

MR. SMITAS: Well, he is his witness.

JUDGE CONSTANTINE: In a couple of cases where a witness for the General Counsel, like this one and adverse witness, was put on and he gave some bad answers, the General Counsel screamed and asked me to disregard them.. I said, 'I can't disregard them'. I have to take all his evidence into consideration, not just the favorable. And then I decide as a credibility matter, which I accept. I want to make that clear.

Go ahead.

MR. SHERIDAN: All right, Mr. Cordi, when you took over Desco Vitro-Glaze, you were aware at that time, that Local 59 was the Collective Bargaining Representative for the Tile, Marble and Terrazzo Workers Helpers, is that correct?

MR. SMITAS: I'll object. There is no foundation for this.

JUDGE CONSTANTINE: Well, he's asking him if he knows, if he does or doesn't.

I'll overrule the objection.

THE WITNESS: I was aware of it.

Q (By Mr. Sheridan) You were, okay. Now, during the time that you have been President, you have in fact, up until let's say the end of January, 1975, abided by the Local contract between Local 59 and the Employers' Association, is that correct?

A Somewhat.

Q To what extent?

A We utilized their wage rate schedule.

Q And --

A By coincidence.

Q By coincidence?

A No, just strike that. We utilized their wage rate schedule.

Q How did you know how much you were supposed to pay?

A It's published.

Q Where?

A Almost anywhere you want to look pertaining to wage rates.

Q In the country, is that correct?

326

A You have Davis-Bacon Acts, you have -- they are in your contracts.

Q In the Local 59 contract?

A No, they are in the contracts that you sign to do work.

Q And they are also in the Local 59 contract with the Association?

A What Association?

Q Are you aware of the Association, Local 59 bargains with?

A Which one are you talking about?

Q Are you aware of any Association that Local 59 bargains with?

A Well, I don't bargain with them so I don't know what you're talking about.

Q Are you aware of any Association that Local 59 bargains with?

A Yes.

Q What is the name of that Association?

A I believe it's the Capital District Terrazzo, Marble and Tile Contractors Association, something to that effect.

Q And that's the contract that contains the wage rates that are paid to Local 59's people, is that correct?

A Yes.

Q And do you have a copy of that contract?

A Yes.

Q And you used that contract to decide what wage rates to pay them, is that correct?

A Not necessarily, no.

Q You don't pay them in accordance with the contract?

A The wage rates are published in the --

JUDGE CONSTANTINE: No, answer the question. Do you pay them in accordance with the contract? You ought to know.

THE WITNESS: Yes, yes.

MR. SMITAS: Excuse me, Your Honor, now --

JUDGE CONSTANTINE: No, there aren't going to be any speeches by the witness. He's going to answer the questions, he isn't going to duck. He knows whether they pay or don't pay according to that contract.

MR. SMITAS: Your Honor, excuse me, I didn't -- the question was, "under the contract". Now, he didn't --

JUDGE CONSTANTINE: There will be no further argument. You go ahead and appeal my decision. I demand he answer the question, yes or no and he answered it "yes". If you're not happy with it, that's unfortunate. But he's under oath and I'm going to have him swear to his answers. He's not here to make answers favorable to you. He's going to answer the truth, even if it hurts you.

MR. SMITAS: I didn't say that, Your Honor.

JUDGE CONSTANTINE: All right then.

MR. SMITAS: All I'm saying is that there are more than one contract, that he is referring to.

JUDGE CONSTANTINE: No, he referred to one contract.

Q (By Mr. Sheridan) NOw, also for a period of time after you took over, you made contributions to the Local 59 SAvings Deposit Plan? Is that correct?

A If they had one, yes.

Q You don't know if they had one?

A Be more specific, what period of time?

Q I said, for the period of time after you took over the Company, you paid into the Local 59 Savings Plan, is that correct?

A And I said, "if they had one, we did so".

JUDGE CONSTANTINE: Well, do you know if they had one?

THE WITNESS: I think they did.

Q (By Mr. Sheridan) You think they did? You don't know if they did?

A I'd have to check our records.

Q I show you Mr. Cordi, what has been marked for identification as General Counsel's Exhibit 5, and ask you to describe what it is.

JUDGE CONSTANTINE: No, he doesn't have to describe it. All you can do is ask him to look at it.

(The document above-referred to was marked General Counsel's Exhibit No. 5, for identification.)

329

Q (By Mr. Sheridan) All right, look at it.

A Umhuh.

Q Have you ever seen that before?

A No.

Q You never saw that before?

A No.

Q Mr. Cordi, are you aware of the fact, that in accordance with the subpoena that I issued, this was produced by you?

A It was produced by my office, not by me.

Q Not by you?

A It does not have my signature on it.

Q It has Mr. Le Pore's signature on is that correct?

A That's correct, so therefore I answered your question to the best of my knowledge and ability.

Q This is December '72, that's prior to when you took over, is that correct?

A That's correct.

Q But this did come from the official records of the Company?

A Yes, it did.

MR. SHERIDAN: I offer into evidence, General Counsel's Exhibit 5.

JUDGE CONSTANTINE: Show it to Counsel.

MR. SHERIDAN: They have copies, Your Honor.

JUDGE CONSTANTINE: All right.

MR. SMITAS: No objection.

JUDGE CONSTANTINE: Incidentally, although this is not the time for me to comment, I can understand why he never saw that. He said he was President since '73, and this is '72.

(The document heretofore marked General Counsel's Exhibit No. 5, for identification was received in evidence)

Q (By Mr. Sheridan) All right, I'll show you what has been marked as General Counsel's Exhibit 6, and ask if you ever saw that?

A The answer is no.

Q You never saw that?

A No.

(The document above-referred to was marked as General Counsel's Exhibit No. 6, for identification.)

Q When did you take over as President of the Company?

A 1973.

Q In January?

A Umhuh. (indicating an affirmative response)

Q What is the date on this document?

A January 1973.

Q Whose signature is on that document?

A The name is Joseph Cordi.

Q Joseph Cordi?

A Umhuh. (indicating an affirmative response)

Q Well, I --

A I did not sign the document.

Q Who signed it?

A Our Payroll Department.

Q You never saw it before?

A No, I did not.

Q Were these contributions made that appear in here?

A Yes, they were, if they say so.

MR. SHERIDAN: I offer into evidence, General Counsel's Exhibit 6.

MR. SMITAS: No objection.

MR. TOCCI: No objection.

JUDGE CONSTANTINE: All right, in the absence of objection, that will be received.

(The document heretofore marked General Counsel's Exhibit No. 6, for identification was received in evidence.)

Q (By Mr. Sheridan) I show you what has been marked as General Counsel's Exhibit 7 and ask if you ever saw that before?

A Nope.

(The document above-referred to had been marked General Counsel's Exhibit No. 7, for identification.)

Q Whose name appears on the bottom of that sheet?

A Joseph Cordi.

Q You didn't sign that one either?

A No, I did not. You'll notice after the signature, there are initials.

Q Where does this document come from?

A It comes from Desco Vitro-Glaze.

Q And with regards to the documents that I have just shown you including this one, are there names that appear on that document?

A Yes, there are.

Q And who are these employees whose names appear on here?

A Do you want me to read them?

Q No, let me ask you this. What were these employees classified as?

A Helpers.

Q So these contributions were made to the Fund that appears on this sheet for the employees who were Helpers, is that correct?

A That's correct.

Q As well as all the other ones that I have just shown you, is that correct?

A That's correct.

JUDGE CONSTANTINE: Now, wait a minute, now. It isn't fair to the witness to say, "all the others" because one of them was before he was President. Show him that and let him

him see them again.

THE WITNESS: I'd like to see them again.

JUDGE CONSTANTINE: Do you know how that happened to be made? How did you happen to make those deposits for those employees?

THE WITNESS: They are made by our Payroll Department on behalf of the employees listed.

JUDGE CONSTANTINE: Did the employees tell you to do it or what?

THE WITNESS: No, I don't think anybody told us to do it but we just did it.

JUDGE CONSTANTINE: You mean, you did it on your own?

THE WITNESS: Yes, we did.

JUDGE CONSTANTINE: All right.

MR. SHERIDAN: I assume we've been -- are we on the record?

JUDGE CONSTANTINE: We are on the record.

Q (By Mr. Sheridan) Now, I show you what has been marked for identification as General Counsel's Exhibit 8, and ask if you've seen that before?

(The above-referred to document was previously marked General Counsel's Exhibit No. 8, for identification.)

JUDGE CONSTANTINE: Well, give him the whole batch and ask him. How many are there?

JUDGE CONSTANTINE: I'm going to ask him some questions on voir dire.

FURTHER VOIR DIRE

Q (By Judge Constantine) Did you do this against the employees' will?

A Not that I know of.

Q Did they tell you to do it?

A I don't believe so.

Q Do you know what union the employees belonged to that are in those Exhibits?

A Aah -- as I said, I am totally unfamiliar with Exhibit Number 5, it was --

Q Yes, that was before your day, excuse me, yes. All right, 6 and 7.

A Five, I'll have to take exception to.

Q I forgot it was before your day. Go ahead.

A Now, what is it you would like to know.

Q Do you know what union, if any, those employees belonged to?

A I would assume, from the documents that they --

MR. TOCCI: I would object to this as not being responsive.

JUDGE CONSTANTINE: Just, yes or no. Do you know what union those employees belonged to?

THE WITNESS: Yes, I do.

Q (By Judge Constantine) What Union was it?

A Local 59.

JUDGE CONSTANTINE: All right, go on from there.

Q (By Mr. Sheridan) And how did these contributions come to be made?

A They came to be made by our Payroll Department.

Q And how did you know how much to contribute?

A As I said before, it's published all over the place. What the rate is. We have wage rate schedules in all of our contracts, there's minimum wage rates posted in almost every construction contract.

Q Right and this would be --

A It became a rule of the industry.

Q Right and --

A It's a basic item of the industry.

Q And the figures that are in these contributions would come from the Local 59 contract, is that correct?

A I --

MR. SMITAS: I'll object to that. That's not a true reflection of fact.

JUDGE CONSTANTINE: Well, he knows. He can say no, if it isn't true. He'll have to do the answering. You can't testify for him.

MR. SMITAS: And I'm not attempting to, Your Honor.

JUDGE CONSTANTINE: All right then, I'll overrule your the same.

MR. SMITAS: Some of them are.

JUDGE CONSTANTINE: So, I'll receive them.

(The documents heretofore marked General Counsel's Exhibits No. 11, for identification, were received in evidence.)

Your objection really goes to the weight I should give to them rather than to their admissibility.

MR. SMITAS: The objection is to the purpose for which they were introduced.

JUDGE CONSTANTINE: The purpose they were introduced, I suppose, is to show that they made contributions to a Fund of Local 59.

MR. SMITAS: There is nothing to substantiate that.

JUDGE CONSTANTINE: Well, there is a little. The question is, how much weight should I give to that little.

MR. SMITAS: You are overruling my objection?

JUDGE CONSTANTINE: Yes.

MR. SHERIDAN: (of the witness) Apart from the documents, Mr. Cordi, it is a fact nevertheless that you are aware during the period of time, from the time you took over until at least December of '74, you were making contributions to the Local 59 Fund, is that correct?

JUDGE CONSTANTINE: Local 59, what? What kind of a fund?

MR. SHERIDAN: The Pension Fund.

THE WITNESS: Yes.

Q (By Mr. Sheridan) And that those documents that were just introduced into evidence are those contributions?

A Yes.

Q The answer is yes?

A Umhuh. (indicating an affirmative response)

MR. SHERIDAN: Would you mark this for identification please, as General Counsel's Exhibit 13?

JUDGE CONSTANTINE: 12, according to my notes.

MR. SHERIDAN: 12?

JUDGE CONSTANTINE: Don't go by my notes, the Reporter is the one who has the numbers. What is the number Mr. Reporter?

THE REPORTER: 12, Your Honor.

JUDGE CONSTANTINE: All right, mark it 12, for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 12, for identification.)

Q (By Mr. Sheridan) All right, Mr. Cordi, I'll show you what has been marked for identification, as General Counsel's Exhibit 12, and ask you what it is?

A (No response)

JUDGE CONSTANTINE: Mr. Tocci, is shaking his head and I assume that means an objection. All right, I'll me is one of fact. And I'll have to do some research on it. Whether this document which is in evidence as a letter of intent, plus oral evidence saying that there was other documents similar to it, amounts to an adequate substitute for a written contract. I'm not going to pass on that on your motion. I'm going to do some research on it.

But I agree with you that I did say, during the hearing, and I'm now making a ruling, that there was no written contracts are understood between Local 59 and your client, the Employer.

MR. SMITAS: I'd like to call Mr. Joseph Cordi.

JUDGE CONSTANTINE: I won't swear you again, Mr. Cordi. You were sworn and that oath is still binding. Any testimony you give will be under oath.

THE WITNESS: I understand.

Whereupon,

JOSEPH CORDI

resumed the stand and, having been previously advised, was examined and testified further as follows:

JUDGE CONSTANTINE: However, you might state your name and address, just because you're now testifying as a witness for somebody else.

THE WITNESS: My name is Joseph Cordi and I reside at 14 Mayflower Drive, Schenectady, New York.

DIRECT EXAMINATION

Q (By Mr. Smitas) Mr. Cordi, when did you associate yourself with the Desco Vitro-Glaze?

A In early 1972, I entered into employment with Desco Vitro-Glaze.

Q And what was your capacity, at that time?

JUDGE CONSTANTINE: He did testify to all this. I can't stop you from bringing it out again. But that was brought out by Mr. Sheridan when he had him on the stand.

MR. SMITAS: I wasn't quite sure whether his previous capacity was established at that time.

JUDGE CONSTANTINE: All right, go ahead. I thought it was.

THE WITNESS: I came into Desco Vitro-Glaze to become a partner.

Q (By Mr. Smitas) And at some time, did you become an officer of the Corporation?

A In January of 1973, I became president of the corporation.

Q Prior to that time, did you hold any office?

A No.

Q Were you a supervisor or actively engaged in the operation or operating the business in that preceding year?

A No.

Q Now what associations does Desco Vitro-Glaze belong to at the present time?

A Well, we belong to the Northeast Subcontractors Association better known as NESCA. We belong to the Painting and Decorating Contractors of America. PDCA. We belong to the Eastern New York Construction Employer's Association. We belong to NADAF, the National Association of Decorative and Architectural Finishes. We belong to DESCO, International. There may be a few others.

Q How, as a member of the Eastern New York Construction Employers, is the corporation bound by any collective bargaining agreements negotiated by that association?

A That we utilize?

Q Are you bound by any agreements negotiated by that association?

A Yes.

Q Which are they?

A They would be the Mason's agreement.

Q With what local?

A Locals 6, 10, and 16.

Q And that agreement covers what type of work?

MR. SHERIDAN: Objection, Your Honor. The agreement itself will speak.

JUDGE CONSTANTINE: I'll sustain the objection. I'll also say that I will mention 6, 10, and 16. I don't want any evidence on 10. There's nothing in here involving Local Number 10.

MR. SHERIDAN: I'll stipulate Local 10 is not involved in this proceeding.

JUDGE CONSTANTINE: You don't have to. It isn't the Respondent and there's no testimony as to that.

MR. SMITAS: It's all one agreement.

JUDGE CONSTANTINE: I don't care. I just don't want anything about Local 10. Why can't you stipulate then to save him the trouble of putting in. Because there's plenty of evidence that there was a written contract. I don't know just the exact way it came in. Involving 6 and 16.

MR. SHERIDAN: Well, I introduced it, Your Honor.

JUDGE CONSTANTINE: All right, then.

MR. SHERIDAN: And I believe his testimony originally said that he did have a contract for --

JUDGE CONSTANTINE: Well, why go into then, if it's in evidence? And you don't have to go into the fact that there was no contract between Desco and Local 59. No written contract. Just take up from there.

Q (By Mr. Smitas) Are you a member of the Capital District Tile, Marble, Terrazzo and State Contractors Association?

A No, we are not.

Q Have you -- strike that -- Now, in preparation for this proceeding, did you make a search of the Company's books and records and files relating to this case?

A Yes, I did.

Q I show you a document and ask you -- is that it?

A Yes.

Q Did you find this document among the books and records of the Corporation?

A Yes, I have. I did.

MR. SHERIDAN: Your Honor, may I see the document?

MR. SMITAS: Yes.

MR. SHERIDAN: Thank you.

MR. SMITAS: I'll offer this as a document which is--

JUDGE CONSTANTINE: I guess it's Respondent-Company 1. I don't know how you want to -- how shall I put on my notes Mr. Reporter? Respondent-Company? Because there's more than one respondent. Or would you rather have it just Company 1?

THE REPORTER: Could we do that?

JUDGE CONSTANTINE: That's up to you.

MR. REPORTER: However you want it.

JUDGE CONSTANTINE: All right, Company 1. Mark it Company 1.

(The document above-referred to was marked Company's Exhibit Number 1 for the purposes of identification.)

MR. SHERIDAN: Objection, Your Honor. That's irrelevant to the issues in this case.

JUDGE CONSTANTINE: I'll have to look at it. All right, I'll sustain the objection. It may go in the rejected exhibit file.

(Whereupon, the document heretofore marked Company's Exhibit Number 1 for the purposes of identification, was rejected from being received into evidence.)

MR. SMITAS: Your Honor --

Q (By Mr. Smitas) Mr. Cordi, I offer you -- I'm showing you a piece of paper. Would you tell us what that paper is?

A Yes, it's a document -- consists of a -- it's a document which relates to a tri-party national and jurisdictional work rules agreement between the National Association of Decorative and Architectural Finishes, Inc., and the Bricklayers, Masons and Plasterers International Union of America and the International Brotherhood of Painters and Allied Trades.

Q Is your company bound by the terms and conditions of that agreement?

A Yes, it is.

JUDGE CONSTANTINE: Mr. Reporter, mark that Company 2, for identification.

(Whereupon, the document above-referred to was marked Company's Exhibit Number 2 for the purposes of identification.)

MR. SHERIDAN: May I see what's being marked?

JUDGE CONSTANTINE: Company 2 for identification. Of course, you can see it, but I want a number on it.

MR. SMITAS: I'll offer this, at this time.

MR. SHERIDAN: Objection, Your Honor. It has nothing to do with the issues of this case.

JUDGE CONSTANTINE: Let me look at it first.

MR. SMITAS: That document becomes incorporated by reference in General Counsel's Exhibit Number 14.

JUDGE CONSTANTINE: I understand that. But Local 59 isn't a party to this.

MR. SMITAS: They're not a party, that's correct.

MR. TOCCI: They're not a party to General Counsel's Number 14 either.

JUDGE CONSTANTINE: That doesn't matter. I'm going to exclude this.

MR. SMITAS: That's what General Counsel admitted into evidence.

JUDGE CONSTANTINE: I'll exclude this.

MR. SMITAS: all right.

JUDGE CONSTANTINE: In other words, if you're trying to show --

MR. TOCCI: No, no, no.

MR. SMITAS: At this particular point, Your Honor, I want to make a motion to --

JUDGE CONSTANTINE: I'll mark this -- for adjournment --

MR. SMITAS: -- take a view -- the National Labor Relations Board, on the Mahar's Ruling.

JUDGE CONSTANTINE: During the next recess, we'll do it.

MR. SMITAS: The -- pardon, sir?

JUDGE CONSTANTINE: Do it in the next recess. We'll have a recess in about an hour.

MR. SMITAS: I ask for a motion right now.

JUDGE CONSTANTINE: Denied.

MR. SMITAS: I want to point out for the record that my client, by your ruling, is being denied due process of law.

JUDGE CONSTANTINE: Everybody accuses me of that. It doesn't impress me at all.

MR. SMITAS: I want to make a statement for the record.

JUDGE CONSTANTINE: You'll make no statement, but you'll go to your next question.

MR. SMITAS: Will you allow me to --

JUDGE CONSTANTINE: Well, I'm going to rule it -- if you will keep on talking like this, I'm going to rule you are finished with the witness. I said you can't argue my ruling. Now, go on to the next question.

counsel. I'm not going to take this and if this keeps up, I'm going to report it to the Bar Association. Your conduct borders upon the unethical. Do you understand? But you go ahead with the case, I'm not going to decide this on your unethical conduct. I'm going to decide it on the merits. I'm not going to have that. Just because I don't have contempt powers, you're not going to take advantage of me. I'll exclude you from the Hearing. Go ahead, put the witness on.

MR. SMITAS: Are you excluding me from the Hearing?

JUDGE CONSTANTINE: No, I'm not. But I might if you keep this up. I'm not going to give you all the time in the world to make an appeal. That's all there is to it.

MR. SMITAS: All right, then I'll request an hour for an appeal.

JUDGE CONSTANTINE: No, I won't give you anymore time. Are we on the record, Mr. Reporter?

HEARING REPORTER: Yes.

JUDGE CONSTANTINE: All right.

Q (By Mr. Smitas) Mr. Cordi, what type of business are you in?

A We're in the special coatings, special floors and ducts, painting and decorating --

Q And what type of classification of employees do you have employed by your company?

A We employ painters and terrazzo workers.

Q Do you have a classification -- your employees known as helpers?

A We do not.

Q How many employees do you employ?

A On today's payroll, there are approximately fifty employees.

Q And how many of these employees -- are any of these employees members, to your knowledge, of any labor organization covered by a collective bargaining agreement?

A Yes.

Q What employees and how many?

A Well, the painters are covered by the --

MR. SHERIDAN: Objection -- the classification is not involved in this case. The painters are not involved in this case, to my knowledge.

JUDGE CONSTANTINE: You may ask him if the -- and you can read from the complaint if you want. If those are covered by any contract and if so, with what union. Those are the only ones that are an issue in the case. Or if you don't want to read from the complaint, you can take up the testimony of -- who is that -- representative of the union who spoke and described the employees? You may ask him if those employees -- and I won't say who they are -- are members of a union and, if so, what union?

Q (By Mr. Smitas) Do you have any employees classified as marble, stone, slate polishers, rubbers and sawyers, tile and marble setter helpers and terrazzo workers' helpers, employed in your employ?

A I am under the impression that we do.

JUDGE CONSTANTINE: May I ask -- you had a paper. Were you reading from the complaint?

MR. SMITAS: I was reading from the complaint.

JUDGE CONSTANTINE: Okay, I just wanted to be sure, so I can follow the testimony.

MR. SMITAS: I believe it's --

Q (By Mr. Smitas) One employee?

A One employee. Although I do not ask people what unions they belong to, I just assume that this is so. From what the testimony was given here, the employee's name was Ali Mohamed and he inferred that he was a member of Local 59. He is the only employee, to my knowledge, that we employed, as a member of Local 59.

Q Has your company ever --

A May I clarify that? I'm under the impression that Mohamed Ali is working for us. We have not heard hide nor hair of him since Monday afternoon.

Q How many employees do you have employed who are members of either Local 6 or 16 of the Mason's Union?

A Approximately thirty.

Q What work is performed by these employees?

A The work we do on special floors and decks and on occasion special coatings. Mostly the installation of floors and decks. The specialty floors and decks.

Q How many different types of specialty coating floors and decks does your company install?

A We handled about 85 different variations from the Desco -- Desco Chemical Company and approximately about 50 variations from the Dexotex Crossfield Products Corporation.

Q Do any of these products contain a natural stone such as terrazzo?

A Well, the make-up of terrazzo is marble chips and matrix. Yes.

Q How many?

A It's hard to say. Well, we have a resin matrix terrazzo floor in the spectrum line which is an acrylic resin. We have it in the Neocream line which is a latex resin. We have it in the epoxy line which is an epoxy resin.

Q In the period -- now, directing your attention to sometime in November of 1974, did you, on this occasion, meet with a representative of Local Number 6?

A Yes, I did.

Q What was his name?

A Aldo Mellosi.

Q And what did Mr. Mellosi -- did Mr. Mellosi make any claims of your company, at this time?

A Yes, he did.

Q What did he claim?

A He claimed the work that we were doing on the Swan Street building, which was our auto-dex floor system, --

Q Would you tell us if anything else -- he claimed?

MR. SHERIDAN: Objection, Your Honor, this is irrelevant.

JUDGE CONSTANTINE: I'll sustain the objection.

MR. SMITAS: May I have the basis for your objection?

JUDGE CONSTANTINE: It's irrelevant. It has nothing to do with the issues in the case. The question is, with respect to the employees that the General Counsel claims, did the union make a claim, and, if so, did they show a majority. I'm not interested in anything outside of the unit. There is no doubt that you had contracts with six and sixteen. And I have no doubt that most of the employees -- are valid. You don't have to prove the validity of that because -- the question is, to the extent that some of these employees who were members of this unit, became -- came into 6 or 16, and did they do it

351

voluntarily or were they coerced. It's that simple. That's why I say it's irrelevant.

Q (By Mr. Smitas) Did you make an assignment of work to the mason's union at this time?

MR. SHERIDAN: Objection. Again, this is not a jurisdictional dispute.

JUDGE CONSTANTINE: All right, I'll sustain the objection.

MR. SMITAS: May I be heard?

JUDGE CONSTANTINE: Yes.

MR. SMITAS: The basis of our defense is that work was not available among unit employees as contended by General Counsel, due to the fact that Mr. Cordi made an assignment of the work that he had and was going to do to members of the mason's unit.

MR. SHERIDAN: If anything, Your Honor, I would say that that bolsters the support of the objection.

JUDGE CONSTANTINE: All right, that's an offer of proof. You're entitled to make it. Co ahead. Your next question.

MR. SMITAS: Are you allowing the question?

JUDGE CONSTANTINE: No. I said that you were allowed to give a reason why you were asking the question and making an offer of proof.

MR. TOCCI: That has not admitted, is that correct?

JUDGE CONSTANTINE: What's that?

MR. TOCCI: It has not been admitted?

JUDGE CONSTANTINE: It has not been admitted.

Q (By Mr. Smitas) In your experience, Mr. Cordi, do you understand -- were you here during the hearing, when representatives of Local Number 59 of the helpers, testified as to the work jurisdiction that they claim?

A I was here.

Q Did you have any work for members of this union that fall within the work jurisdiction as testified to by the business agent and the international representative and as submitted in the constitution and by-laws marked as General Counsel's Exhibit Number 23, for employees and members -- for your employees who were members of Local 59?

MR. SHERIDAN: Objection, Your Honor. The issue is whether or not they were doing the work, whether -- not whether he had work for them. The question is what work they were doing.

JUDGE CONSTANTINE: He wants to know if there was any work in the unit for the unit employees to do. I'll allow that. They have a right to say that the reason they didn't continue was because there was no more work for them in the unit. In the unit -- not work generally but in the unit. And he described the unit. Go ahead, you may answer the question.

THE WITNESS: The answer is no. May I elaborate?

JUDGE CONSTANTINE: No, you've answered the question.

THE WITNESS: All right.

Q (By Mr. Smitas) Was there an occasion, and if so, when did it happen, that you received a claim by Local Number 6 of the work claimed by the unit employees?

MR. SHERIDAN: Objection, it's the same question he asked before.

JUDGE CONSTANTINE: I'll sustain the objection.

Q (By Mr. Smitas) Did you have a conversation with Mr. Aldo Molessi?

A Yes, I did.

Q When did this conversation take place?

A November. 1974.

Q And what was the conversation?

MR. SHERIDAN: Objection, Your Honor, this is the same one that you sustained the objection for.

JUDGE CONSTANTINE: Well, wait a minute, let me ask you -- was there any person present from Local 59 during this conversation?

THE WITNESS: No.

JUDGE CONSTANTINE: No, then, all right, I'll sustain the objection.

MR. SMITAS: May I be heard, Your Honor?

JUDGE CONSTANTINE: Well, I'm ruling that it has nothing to do with 59 unless they're present. You just can't make statements binding on them when they are not present. It's hearsay and that's my ruling. There are the exceptions to the hearsay rule, one of which is that when someone is present, it's okay.

THE WITNESS: We're not going to talk about 59?

JUDGE CONSTANTINE: Off the record.

(A brief recess was taken.)

JUDGE CONSTANTINE: Back on the record.

Q (By Mr. Smitas) Did you have an occasion to meet with Mr. Aldo Mollesi and some of your employees in January of 1975?

A Yes.

Q Would you tell us, to the best of your recollection, when this took place?

A Late in January, 1975, I got a call from Also Molessi, --

Q What kind of a call?

A A telephone call.

Q And what did he say?

A He had informed me that he was --

MR. SHERIDAN: Objection, Your Honor.

JUDGE CONSTANTINE: As a result of the telephone call, you met with Mollesi, did you?

THE WITNESS: Yes, I did.

JUDGE CONSTANTINE: All right, go on from there.

Q (By Mr. Smitas) Would you tell us of the meeting and when you met -- and who was present?

A In the latter part of January, 1975, through a telephone call from Aldo Mollesi, I met with him on the Albany South Mall project at the Health Department Laboratory. At this meeting, --

Q Who was present at the meeting?

A Well, initially Aldo and myself. And then we went in to our job site office there and we were joined by Ken King, John Sagotto, Ali Mohamed, J.C. Hamilton and I guess that was about it.

Q What did you tell those gathered at this time?

A I asked those people if they wanted to enroll in the local 6 -- and I asked them if they wanted to enroll in Local 6? And if they did so, they would be doing so of their own free will and on their own accord.

Q And, what, if anything, did anyone else say at this time?

A Aldo had pointed out to Junior --

Q Junior who?

A Mohamed Ali or Ali Mohamed that he had made application to Local 6 about a year, a year and a half ago. And Mohamed -- Ali Mohamed discussed that matter with him and so on and so forth.

Q What is the so on and so forth?

A Well, just in general the idea that he did want to become the mechanic a year and a half ago and went and made application to Aldo about it and so on. And you, -- you know, in that general sense. The members -- the people that were present -- Ali Mohamed and J.C. Hamilton had elected, on their own free will, to join the union.

Q How did they manifest that election? What did they say?

A Well, prior to -- prior to my coming to the job --

JUDGE CONSTANTINE: No, what did they say on this occasion? That's the question.

THE WITNESS: Well, we asked them if they wanted to do so of their own free will and they said yes.

JUDGE CONSTANTINE: All right.

THE WITNESS: Absolutely. Ali did as he -- to repeat the testimony that Mohamed Ali made previously, but he did want some clarification on the matter whether he would be paid journeyman's wages, etc. and so on and so forth.

Q (By Mr. Smitas) What did you say?

A I toldhim definitely, he would. He's been doing the work of the mechanic consistently for previous employment and he was well qualified to do so and there was no reason why we wouldn't pay him the journeyman's rate.

Q Did the employees at this time make an application to join the union?

A Yes, they did.

Q Which employees?

A J.C. Hamilton and Ali Mohamed.

Q And was there, at any point in time, a discussion regarding initiation fees at this meeting?

A I didn't really get involved in any fees or any -- that was handled -- once they decided that they wanted to join, it was handled strictly by Aldo Mollesi. And the individuals themselves.

Q Did you, at this time, loan any employee money for any reason?

A No, I did not.

Q Now, did there come -- was there anything else that you can recall, at this time, that transpired at this meeting?

A Well, I did notice Aldo receiving monies from J.C. Hamilton and Ali Mohamed and writing out some paperwork, whatever -- I didn't witness the paper work. It's a large room and people were coming and going and, you know, on the outside of the room and discussing different things with our superintendent and John Sogotta who happened to be present -- and incidentally, John had requested upgrading on his volition months previous to this occasion and did express his earliest to become a mechanic at the time and we told John -- we advised John that he would be better off joining the Schenectady Local, since he lived in Schenectady.

Q Did this transpire at this meeting?

A I believe so. Yes, yes.

Q Do you recall anything else that occurred at this meeting?

A If I may look at my notes to refresh my memory.

Q If you don't recall anything at this point, fine.

A Perhaps I can bring it up again.

Q Now, did there come an occasion when you met with Vincent Riggi?

A Yes.

Q Who is Mr. Vincent Riggi?

A Mr. Vincent Riggi is the business agent for Local 16 the Schenectady Bricklayers, Masons, and Plasterers, International Union.

Q Now, how did this conversation take place? How did it come about?

A Well, we met on the job. Previous to meeting on the job, I received a call from Vince Riggi and he informed me he would be --

MR. SHERIDAN: Objection, Your Honor. To the conversation.

JUDGE CONSTANTINE: As a result of the conversation, you met with Riggi?

THE WITNESS: Yes.

JUDGE CONSTANTINE: All right, go on from there.

Q (By Mr. Smitas) Did he call you or did you call him?

A I just stated he called me.

Q And a meeting was arranged?

A Yes.

Q And do you recall when that meeting was?

A It was shortly after we met with Aldo on the job. Perhaps the following week.

Q And it was sometime in January, 1975?

A I believe so. The latter part of January. Again, if I could refer to my notes, I could tell you the exact date. But we are at many places at many times.

JUDGE CONSTANTINE: No, you've answered the question. Please wait for the next question.

THE WITNESS: Okay.

Q (By Mr. Smitas) Where did this meeting with Mr. Vincent Riggi take place?

A Again at the Albany South Mall project Health Department Labs.

Q And who was present at this meeting?

A Again, John Sagotto was there, Dominick Marodda, Dominick Capolla, Constantine Psarras, John Sattaru, Demetrius Evangelidis, Kenny King, Vincent Riggi and myself.

Q And would you tell us what transpired during the course of this meeting?

A Yes, we had informed the employees that had worked for us that they would have an opportunity of their own free will and volition to join the Local 16 Masons Union and if they wanted to do so, it would be, again, at their own free will and volition and this was an opportunity to do so. And if they wanted to do so, to respond to that effect.

Q And what, if anything, did anyone at that meeting say in response to that?

A In general, they were all in favor of doing so. Without reservations.

Q And can you recall what they said at that particular point in time. Specifically.

A Well --

JUDGE CONSTANTINE: If they all said about the same thing, pick out anyone's statement and repeat what he said and then say that the others said about the same thing. If there were differing statements, then let's have each one.

THE WITNESS: Well, again, John repeated -- John Sagotto repeated the idea that this is something that he's

361

wanted to do and required to do -- not required, but you know, he wanted to do and had asked to do. Basically, requested to do previously and welcomed the opportunity and they did state that -- you see, since we are a special --.

JUDGE CONSTANTINE: No, just what they said. They didn't say, since we are a special -- See, you're hear to answer questions.

THE WITNESS: I'm trying to do so.

JUDGE CONSTANTINE: All right.

THE WITNESS: To the best of my ability and get the inference and connotation across--

JUDGE CONSTANTINE: No, you're not to get any inference or connotation across. You get the conversation across. I'll decide on the inference. In general, you said that they agreed with you.

THE WITNESS: Since I'm not a silver-tonged orator, I have to fish for words.

Q (By Mr. Smitas) Go ahead.

A Well, in essence, they welcomed the opportunity to join the Mason's union.

Q Was any reference made at all with regard to their tenure of employment or their continued employment with the employer in reference to joining Local 16?

A You mean whether they asked --

Q Well, let me put it another way. Did you, in any way, make reference to their membership, if they had membership to Local 59 of the Helpers Union?

A No, I did not.

Q Was there any threat made by you at this meeting --

A In no way, shape, or form.

Q Was there any threat made by you at the previous meeting with Mr. Mellosi attended?

A There was not. I emphatically expressed to these gentlemen that this was something that they had to do of their own free will and on their own accord. We were just giving them the opportunity to do so if they so desired. And there would be no repercussions in any way, shape, or form, no matter which way they decided.

Q Were you advised to make such a statement at these meetings?

A Yes, I was.

Q By whom were you advised to make such a statement? At these meetings.

MR. SHERIDAN: Objection, Your Honor.

JUDGE CONSTANTINE: I'll sustain the objection.

MR. SMITAS: We have automatic exceptions to your rulings.

JUDGE CONSTANTINE: Of course. Well, let me tell you why I said that. It isn't a question of whether he was advised or not, but what he actually said. If he did it on his own, okay. If he said it as a result of a lawyer, assuming I find a violation, I assume you can't find violation on this when he says they did it voluntarily, but assuming, I should find a violation, the fact that a lawyer told him to say it won't protect him. It is the language that I have to interpret regardless of how he came to order it. Now, we'll say it's a credibility question because if I credit him, he hasn't said anything, as far as I can make out, that really comes close to 8(b)(1). I mean, 8(a)(1), which is a threat or force or coercion.

Q (By Mr. Smitas) Now --

JUDGE CONSTANTINE: Or even interferes. 8(a)(1) also had the word interferes in it.

Q (By Mr. Smitas) Would you tell us, after you made the statement to the employees, and after what you just testified were their replies, what, if anything, then transpired?

A After they decided to join up, they got involved with Mr. Riggi in the process of joining up. And as they were doing this, I again sort of drifted away from the area and I did poke my nose in once in a while. One time when I poked my nose in, Dino Psarras asked me if he could borrow $50. And which this is a normal practice with me. Our employees continuously borrow money from me and I loaned him $50. Which hasn't been returned yet. However --

Q Did you loan anyone else any money at that time?

A Yes, I did. John Sotirou -- in fact, Dino had come up to me and said he had his check and would I cash his check and I said --

Q Who is Dino?

A Constantine Psarras.

Q And I told him it was my check, I didn't want to -- you know, since I gave it to him, I didn't want to cash it. I didn't want it back and I asked him if he needed money, and he said, yes, he did. If I'd loan him $50 and so I says, "Fine, sure." "No problem.)

JUDGE CONSTANTINE: Off the record a moment.

(Discussion off the record.)

JUDGE CONSTANTINE: Back on the record.

THE WITNESS: In fact, I -- after I loaned Constantine Psarras the $50, John Sotirou requested $50 -- a $50 loan from me and I also responded with a $50 loan to him.

Q (By Mr. Smitas) Would you tell us, if you can recall, what he said in borrowing this $50?

A Who, John Sotirou?

Q Yes.

A Well, he told me he didn't have the money with him and he wanted to join up in the union and he'd appreciate it if I'd loan him the money.

Q And did you loan him the money?

A Yes, I did.

JUDGE CONSTANTINE: Just out of curiosity, you said, Psarras never paid you. I'm just curious to know, did Sotirou pay you back?

THE WITNESS: I believe he paid me back within the next day or two. That has nothing to do with the case, I just was curious.

MR. SMITAS: I think it does have something to do with the case. It was loaned by him.

JUDGE CONSTANTINE: Well, no, I was talking about the payment back. One man paid him and the other one didn't pay him the loan.

MR. SMITAS: Well, I think --

JUDGE CONSTANTINE: I'll make a finding now if you're afraid of a bribe. That it was not a bribe, that it was a genuine loan.

THE WITNESS: Incidentally, the problem with Psarras was that shortly thereafter he got into an automobile accident and he was laid up for a period of time, which he is still out on disability I understand. So he didn't really have an opportunity to pay me back.

Q (By Mr. Smitas) Can you recall anything else that was said, that transpired at this meeting?

A Relative to --

Q Anything that was said? Anything that you recall.

JUDGE CONSTANTINE: Not about baseball. Just about this case.

THE WITNESS: Yes.

JUDGE CONSTANTINE: I see a few smiles in the room.

THE WITNESS: The people such as Dominic Marodda, and John Sagotto so referred to the fact that they've been doing this work for the past fifteen or sixteen years, since that's the period of time that they've been with the company. They welcomed the elevation and -- or the upgrading and they did sort of relate the fact that they didn't have much faith in the Helpers Union, Local 59, just in conversation, they felt that possibly there was no future for them in Local 59. It -- they had very little faith in it's being sustained.

Q (By Mr. Smitas) Now, Mr. Cardi, did --

A They did state that years ago when work was such that it required helpers, whereby they had to do mud-set tile, and cement terrazzo and so on and so forth, that the helper field was more involved in the industry. But since -- and especially in a specialty lines, there was very little that they could do and in fact, the field of helper has diminished considerably.

JUDGE CONSTANTINE: They said that? They said the field had been diminished?

THE WITNESS: Well, I'm using my own words for what they expressed. They -- I'm not using the exact words that they used.

Q (By Mr. Smitas) Mr. Cordi, --

A They did relate to the difference between the work years ago, and there was a general discussion -- in fact, Vince Riggi was involved in a discussion where he stated that -- I guess, Vince did bring out the idea that all of this work should have been done by the -- involved with the Masons originally and they concurred with this attitude and they did state that years ago, basically, the helpers were more involved when they did different types of work, but now that type of work isn't around anymore. Relative to, you know, what it was twenty years ago and so on and so forth. And Vince did elaborate quite a bit on the idea that we always should have done our own work and stayed with it and did elaborate on -- he gave a little speech on the idea of when things were good, people -- it was easy for, you know, to hand work away, but now tings are tight at this time and so on and so forth.

Q Now, --

JUDGE CONSTANTINE: I might add that no one asked you what Riggi said, but since it's in, it's in and I'll take that into consideration in deciding whether there was or was no restraint and coercion. It's dangerously close to it.

MR. TOCCI: What was that? I missed that.

JUDGE CONSTANTINE: I just said, no one asked him what Riggi said, but he volunteered it, and I said, I'm going to take that into consideration in determining whether there was anything in the way of restraint or coercion.

MR. TOCCI: By Riggi?

JUDGE CONSTANTINE: Yes. He's -- you haven't heard what he said --

MR. TOCCI: I heard what he said.

JUDGE CONSTANTINE: All right, I'm going to take it into consideration. No one objected to him going a -- way beyond the question. As a rule I've been stopping it, but from now on, I'm not going to. I'm going to let people shoot their mouths off. Maybe it's going to help me decide this case.

THE WITNESS: Well, this was long after --

JUDGE CONSTANTINE: No, you aren't going to say anymore either. You've made a long statement although the question didn't call for it.

Q (By Mr. Smitas) After these meetings, Mr. Cordi, did you have an occasion to meet with any of your employees and discuss with them the payment of dues or initiation fees to Local 6 or 16?

A Well, I continuously meet our employees.

JUDGE CONSTANTINE: No, did you have any meetings where you discussed their dues to these two Locals, 6 and 16? Not what you said. If you said anything, that's the next question. Did you have any meetings? Where you discussed the dues.

THE WITNESS: Any meetings that were called specifically to discuss these dues?

JUDGE CONSTANTINE: No.

THE WITNESS: Yes, I did. I did have discussions on dues, etc.

Q (By Mr. Smitas) Would you tell us when these may have occurred?

A I had occasion to bring a payroll down to the South Mall in February when our superintendent's father had died and he had to return to Canada for the funeral. And in the process of handing out the paychecks, I came across John Sotirou and Demetrius Evangelidis. And on that occasion, I did ask them what their standing was. If they were in good standing with the unions and so on and so forth. And they had told me that they were not. That they had not paid up and so on and so forth. And --

Q Did you, at this time, threaten them in any manner, shape or form?

MR. SHERIDAN: Objection to the form of the question, Your Honor.

JUDGE CONSTANTINE: No, I'll allow it. It's a short

370

cut. You could ask him what he said, but I'm trying to cut it short.

THE WITNESS: No, I did not threaten them in any way, shape or form. I don't know how to interpret what I said.

Q (By Mr. Smitas) Tell us what you did say.

A Well, as I said I asked them what their standing was. And they told me they hadn't paid up. And I told them that this was a union job and basically that there was union people all over the place and it would be a good idea. I didn't say they had to in any way, shape or form, but it was always a good idea to keep the record clean and stay in good standings.

Q Now, --

A I did not tell them that they had to belong to a union.

Q Did there come --

A Because I could care less if they belonged to a union or not but I just advised them as I so often advise most of our employees, because they do come to us --

Q Well, for --

A -- for aid and assistance and advice.

Q Mr. Cordi, would you -- did there come an occasion where you met with international representative of the Helpers Union?

A Yes, I did.

Q And when did that occur?

A Approximately in the middle of February.

Q And would you tell us how this meeting came about?

A Upon call from Jerry BomBassaro, he informed me he would be on the job on February 18th, I believe it was, or thereabouts. I told him I would be in Poughkeepsie the early part of the day. And I would try to make it and discuss whatever he wanted to discuss with him.

Q And did you have a meeting?

A Yes, when we returned from our trip we arrived on the job approximately about late afternoon.

Q Who was present at the meeting?

A Initially, well, when we arrived, Jerry Bombassaro and Dave Lavenburg had Ali Mohamed cornered in a room for considerably over an hour. And I had sort of hinted to these fellows that, you know, they were discussing their problems on my time and so on and so forth. And, shortly, thereafter, in fact, it was approximately around 4:30, because the men had already stopped work for the day. I met with Jerry Bombassaro, Dave Lavenburg, Ken King, and myself only and discussed the --

Q Was Mr. Ali Mohamed there?

A Not at that time.

Q What, if anything, was said at that particular time?

A Well, Jerry was quite concerned about --

JUDGE CONSTANTINE: I'd rather hear his last name, please.

THE WITNESS: Mr. Bombassaro wanted to know why that these men that had been doing this work, meaning sort of Ali Mohamed, John Sagotto --

JUDGE CONSTANTINE: Did he mention them by name?

THE WITNESS: No.

JUDGE CONSTANTINE: All right, then, you just give me what he said.

THE WITNESS: All right, these men that had been in Local 59, that had been doing this work for a period of time now had to go into another union.

Q (By Mr. Smitas) And what did you say?

A And I told him, definitely they did not have to go into another union in any way, shape or form. If they volunteered to do so and I tried to elaborate -- Jerry wanted to know --

Q Jerry who?

A Mr. Bombassaro wanted to know, you know, why we didn't utilize helpers and I got into quite an elaborate discussion --

Q Tell us what he said and what you said.

A I explained to Jerry that originally the company was founded by Ray Patrucko, who was a terrazzo worker and most of the workers, at that time, were part of his family and they all belonged to the -- either to the Terrazzo Workers or the Helpers. But, in that period and in that time, the Terrazzo Workers and Helpers worked mainly on cement Terrazzo and mud-set tile and this was a basic introduction into the industry of the thin-set terrazzo, the resin matrix terrazzo which was divorcing itself completely from the old-fashioned methods. And, that there wasn't any organizations really set up and provided for, at that time, to take care of the type of worker that would be incorporated in this type of work. And I explained to Jerry that the technology in this industry has been changing so rapidly that we were doing things today that we never dreamed of doing five years ago and that possibly we'd be doing things five years from now that we're not dreaming of doing today. And, I told him this is very predominant through-- the industry and since we were a contract that specialized, that we were not -- we do not do ceramic tile, we do not do terrazzo work, we did strictly a specialty type of operation which required factory trained mechanics and factory trained personnel. They had to know, you know. They all had to be trained. It's something that you just didn't. You couldn't pick out of a union hall and say, you know, put these men on the job and they could do it. It took quite a while. It takes quite a bit of training to get involved in these various systems and quite a bit of know-how and technology and techniques that are incorporated into this. And the reason why that these people were doing it is because they did it from day one. And they basically were not doing helper's work in any way, shape or form. Most of these people were trained.

As an example, J.C. Hamilton came to us --

JUDGE CONSTANTINE: You told him that? You mentioned J.C. Hamilton?

THE WITNESS: Yes, I did.

JUDGE CONSTANTINE: All right.

THE WITNESS: I definitely mentioned him.

JUDGE CONSTANTINE: I'm going to give you a minute. At 5 o'clock, you're going to finish with the witness. He's raving and ranting. And I'm not going to let this case last forever. At 5 o'clock, you can appeal to the Board, because I'm not coming in tomorrow. But there's going to be a limit to when this case is going to end. And no one's going to stall. This witness is raving and ranting. You should have finished with him long ago. He's been on two hours. And he hasn't said anything. It's now 3:17. You'd better finish by five. Whether you like it or not. We're not going to let this case drag. When I come back, we're going to finish it in three days. We're coming back July 15th. And if the Board doesn't like it, they can send another Judge. This case is not going to drag. Go ahead.

Q (By Mr. Smitas) Would you continue, Mr. Cordi.

A Yes, I will. I explained to him that J.C. Hamilton was brought into this job specifically from Cleveland, Ohio, because he had twenty years of background on mixing and working with Dexotex --

JUDGE CONSTANTINE: Now, what's that got to do with this case. Will you tell me -- that fact that they brought J.C. Hamilton from Cleveland. But go ahead, let him talk. You've got until 5.

MR. SMITAS: Mr. Hamilton is part of the unit that is alleged by the Counsel for the General Counsel.

JUDGE CONSTANTINE: Maybe so, but I don't care whether he came from Cleveland or from Alaska. Go ahead. Take all the time you want. You're going to --

THE WITNESS: I don't think he came from Alaska. I'm pretty sure he came from Cleveland. However, --

JUDGE CONSTANTINE: And I don't want any snotty remarks from you either.

THE WITNESS: What --

JUDGE CONSTANTINE: When you said you don't think he came from Alaska. Do you understand?

THE WITNESS: Yes, I do.

JUDGE CONSTANTINE: All right, you behave.

THE WITNESS: I'll do my best.

JUDGE CONSTANTINE: All right, go ahead. Go on with that long speech of yours.

Q (By Mr. Smitas) Would you tell us what else you said to Mr. Bombassaro.

A Yes, I'd like to try and recollect my thoughts. I've been interrupted. Give me a few moments to think about it. Yes, basically most of the context of my discussion with Mr. Bombassaro was the fact that the people that we utilized in our work really didn't do helper's work and they were basically trained applicators and personnel to handle these special operations and techniques and technologies. I did relate to him, as an example, that certain things such as years ago, I started off and my family was very big in plastering and today we don't do stucco work the way we did twenty years ago. Now, it's being done by a coating man. We use a polyacrylide system that looks like stucco, feels like stucco, acts like stucco, but it's not plastered on with a trowel and it's not done with a plasterer. It's done with a coating man. A technician who's specially trained to do this. It's a polyacrylide system. I did relate that example to Jerry Bombassaro, trying to emphasize the fact that the men that have been with us for fifteen or eighteen years. Most of them that long were basically doing this special trained techniques in mechanic type of work and there was no reason why they shouldn't be upgraded to a mechanic.

We also related to Jerry that we are a member of NAADAF, The National Association of Architectural and Decorative Finishes and had an agreement with this organization which we anticipated or would live by and to employ his people would be in violation of this agreement. Since the work that we did basically was covered by the NAADAF agreement and it was to this agreement that we were living by since the majority of our people were under this agreement.

I expressed to Jerry Bombassaro at the time that we did have problems with the painting business agent coming to that job and requesting that we use painters to apply our dressing. We said that this conformed with the NAADAF agreement. Jerry felt that he wanted -- that the helpers were supposed to be doing this work. And I explained to him that the -- again, it was something that was common to the painting trade and since we did employ painters and since it did comply with our NAADAF agreement that we would utilize the painters to do this work.

We also discussed -- Jerry did point out to me that there were other contractors in the area that did similar work to ours. That employed helpers and I explained to Jerry that these contractors were basically ceramic tile and terrazzo and marble contractors. That normally employed terrazzo workers, tile setters and helpers and that the amount of work they did in our line was very minimal, whereby we were a major contractor in this type of operation -- they just did it as a supplemental type of work and utilized the people they had on hand to do it.

Q (By Mr. Smitas) And what did Mr. Bombassaro say to you?

A He asked me basically for -- if it made any difference what to me -- what union these people belonged to and I told him I really didn't -- I was more interested in the type of people doing the work, rather than the type of representation that they had. But since we're members of -- we did fall under a collective bargaining agreement with NAADAF, that we intended to live by that agreement. And since we did not have a signed agreement with them and one with the NAADAF organization, that we intended to live by that.

Q Did he, at this time, ask you to sign an agreement with Local 59?

A Gee, I kind of really felt that he knew what my impressions were and my sentiments were and I don't really think he posed the question that way. He asked me if I would reconsider.

Q Reconsider what?

A Utilizing his people and, you know, basically -- you know, nobody's being laid off and nobody's being terminated, mostly these people are being upgraded.

Q Now, in the past, have you upgraded individuals who worked as assistants to mechanics to the position of mechanic?

A Yes, we did.

Q Could you tell us how many times this may have occurred?

A It's occurring constantly. Back in November we upgraded Chris Glancus, who is one of our finest --

JUDGE CONSTANTINE: Let me ask the General Counsel -- do you contend that they're upgrading anybody as a violation -- is that --

MR. SHERIDAN: No, Your Honor.

JUDGE CONSTANTINE: All right, then, let's not go into it. They don't contend that upgrading is a violation.

MR. SMITAS: Well, I'm --

JUDGE CONSTANTINE: Well, on what issue --

MR. SMITAS: Your Honor, regarding on page 5 and paragraph --

JUDGE CONSTANTINE: Of the complaint?

MR. SMITAS: Of the complaint. Paragraph marked h.

JUDGE CONSTANTINE: Let me see it, Mr. Reporter. Because I just asked the General Counsel and he says he does not contend it.

(Whereupon, the Hearing Reporter shows Judge Constantine

JUDGE CONSTANTINE: He knows what promotion means. I want to know whom you took out of the unit?

THE WITNESS: John Sagotto was promoted and/or upgraded out of the unit. To the status of mechanic. Dominick Capolla was taken out of the unit and upgraded and/or promoted to status of mechanic. Dominick Moradda was upgraded and promoted to the status of mechanic.

JUDGE CONSTANTINE: They mentioned Evangelidis.

THE WITNESS: Excuse me, Ali Mohamed was taken out of the unit, upgraded to the status of mechanic. Demetrius Evangelidis was not in the unit or any other unit. He was not a member of any other organization until he became employed by us.

JUDGE CONSTANTINE: You see now why I asked. In your offer of proof, you mentioned Evangelidis.

MR. SMITAS: He hasn't finished testifying yet.

THE WITNESS: Evangelidis --

Q (By Mr. Smitas) Well, what was his classification?

A According to our pre-hire agreement, we are allowed to pre-hire a man before we give him status.

Q What classification was he placed into? Under your agreement.

A Improver.

Q How about Mr. Hamilton?

A He was upgraded to the status of mechanic.

JUDGE CONSTANTINE: How about Psarras? You mentioned him --

THE WITNESS: Psarras was upgraded to the status of mechanic.

Q (By Mr. Smitas) We mentioned Sagotto?

A Sagotto was upgraded to the status of mechanic. And Sotirou was not in the unit. He was a new employee. Did not belong to any organization until he became employed by us and then he was --

Q Classified as what?

A Well, he was upgraded to -- he was classified as improver. He was not a member of any unit.

Q Mr. Clothier.

A Mr. Clothier is our shop man. And he remained as our shop man. Shop man truck driver. And he remains as a shop man truck driver. He's not in any unit.

Upon their promotion they all received more money and additional benefits.

Q Now were you ever notified of a petition being filed by the National Labor Relations Board?

MR. SHERIDAN: Objection, Your Honor. I don't even know what kind of a question that is.

MR. STIMAS: Referring, Your Honor, to paragraph number -- the allegation in paragraph number 13 on page 7, paragraph b.

JUDGE CONSTANTINE: Paragraph b says: "Commencing on or about January 25 and continuant to date, Respondent, in order to underline Local 59 and so forth --" There's nothing about a petition there.

MR. STIMAS: It says to interfere with the election process and to preclude the holding of a fair election.

JUDGE CONSTANTINE: It doesn't say there was a petition filed.

(By Mr. Stimas) Did you interfere with any election process or preclude the employees from holding any type of a fair election?

A No, I did not.

Q Did your company, to your knowledge, ever recognize Local 59 as the collective bargaining employee -- representative of its employees?

A Not to my knowledge.

Q Did you ever withdraw recognition from Local 59 as the duly designated collective bargaining representative of the employees? Described in the unit, which I described to you in the previous question?

MR. SHERIDAN: Objection, Your Honor, that's about as leading as you can possibly get.

JUDGE CONSTANTINE: Well, I don't know if it's leading or not, but if he never recognized them, then he couldn't possibly withdraw recognition. So I'll sustain the

JUDGE CONSTANTINE: We're making good progress. Would someone tell me if it's still raining out. I can't look out.

Let's take the morning recess. I mean, the afternoon recess.

THE WITNESS: Let me clarify one thing.

MR. SMITAS: We'll take the recess.

JUDGE CONSTANTINE: No wait a minute, let him finish his statement.

MR. TOCCI: There's no question, is there?

JUDGE CONSTANTINE: No, but no one has objected to his talking.

MR. TOCCI: I do. There's no question before him.

MR. SHERIDAN: I don't object.

JUDGE CONSTANTINE: All right.

MR. TOCCI: Well, I -- there's no question. I don't see how you can answer where there's no question. Could we take a recess.

JUDGE CONSTANTINE: Afternoon recess. Come back in ten minutes, please.

(Whereupon, an afternoon recess was taken.)

JUDGE CONSTANTINE: On the record. Go ahead, Mr. Smitas.

Q (By Mr. Smitas) Mr. Cordi, did you solicit your employees on or about January 27th, 1975, at the job site to withdraw their membership in Local 59?

A No, I did not.

JUDGE CONSTANTINE: Or at any other time?

THE WITNESS: No.

Q (By Mr. Smitas) Did you, at any time, Mr. Cordi, during all times pertinent hereto at the job site threaten your employees in this unit as we have previously described with discharge unless they joined Respondent Local 16?

A Definitely not.

JUDGE CONSTANTINE: As far as you're concerned -- I'm not saying that this is true, I'm just asking. They joined Local 16 if they joined voluntarily, without any prodding from you or forcing from you?

THE WITNESS: That's correct, sir.

JUDGE CONSTANTINE: All right.

THE WITNESS: I cannot remember firing an employee of mine ever.

JUDGE CONSTANTINE: No, I don't mean firing. You could have threatened to fire --

THE WITNESS: No way.

JUDGE CONSTANTINE: All right.

THE WITNESS: I have never -- I don't get involved with hiring and firing.

MR. SMITAS: I will again, at this particular point, since this is the termination of my case, again offer the

MR. SMITAS: I'm sorry. I'm through with the witness at this time.

JUDGE CONSTANTINE: All right.

THE WITNESS: May I make a clarification?

JUDGE CONSTANTINE: It's up to your lawyer. I don't care.

MR. SMITAS: I'd rather he didn't.

JUDGE CONSTANTINE: All right, that brings to you, Mr. Tocci.

CROSS EXAMINATION

Q (By Mr. Tocci) You have General Counsel's 14 there?

A Yes, sir.

JUDGE CONSTANTINE: All right, go ahead.

Q (By Mr. Tocci) Mr. Cordi, I show you General Counsel's Exhibit Number 14, which I believe you have previously identified. Is that the agreement that you had in effect with the Mason's Union, covering the employees at the South Mall?

A Yes, sir.

Q And was there a predecessor agreement to this one, to your knowledge?

A You mean, with other dates on it?

Q No, I mean, prior -- this --

A A predecessor agreement with Local 6 and--

Q Yeah.

386

A Sure.

Q And it covered -- did the predecessor agreement cover basically the same unit described in there?

A Yes.

Q Now, as to a meeting, you stated, took place in November of 1974, at which Mr. Mollesi was present?

A Yes.

Q No, I believe it was January, '75, at your job site?

A Yes.

Q And you say present were Mr. Mollesi, yourself, King, Sagotto, Ali Mohamed and J.C. Hamilton?

A Yes.

Q Now, you stated that you had promoted Mr. Sagotto, that was your testimony. You had promoted him to the position of a mechanic with your company?

A Yes, sir.

Q At the time you had this meeting with Mr. Mollesi, had that promotion been put into affect?

A No, sir.

Q Well, when did this promotion take place?

A The following week with Mr. Riggi.

Q So Sagotto's promotion didn't take effect then?

A No.

Q And when did -- now Mr. Ali Mohamed was at this meeting also?

A Yes.

Q Was he a member of Local 59?

A I believe so.

Q And you heard him testify to the type of work he was doing?

A Yes, sir.

Q And he said he was using the trowel in performing mechanics work in the installation of floors?

A Yes, sir.

Q And at the time of this meeting with Mr. Mollesi, he had been performing that work for some time prior to that?

A Oh, yes.

Q So had he been promoted to a mechanic at the time of this meeting with Mr. Mollesi?

A Yes, sir.

Q And Mr. Hamilton -- was he a member of Local 59?

A No, sir.

Q He had never been a member of Local 59?

A No, sir.

Q Had he ever been in the bargaining unit covered by Local 59?

A No, sir.

Q And he was at this meeting with Mr. Mollesi?

A Yes, sir.

Q And at this meeting, did Mr. Mollesi, to your knowledge, sign up any of your employees to join or take any initiation fees?

A Yes, sir.

Q From which employees?

A J.C. Hamilton and Ali Mohamed.

Q And did -- prior to his taking their initiation fees, did Mr. Mollesi inquire of you as to whether you had certified or considered these men to be capable and qualified as mechanics?

MR. SHERIDAN: Objection, Your Honor.

JUDGE CONSTANTINE: The question isn't whether they're capable or not, but whether they are or not in the unit. So I'll sustain the objection.

MR. TOCCI: Whether they are or not in what?

JUDGE CONSTANTINE: The question isn't whether they are able or competent or not or whether they are in or out of the unit which is the one in dispute. You may show that he promoted them out of the unit and he has said that --

MR. TOCCI: All right --

JUDGE CONSTANTINE: -- that Hamilton --

MR. TOCCI: Okay, all right.

JUDGE CONSTANTINE: -- at this time, had been promoted and that Sagotto didn't get promoted until the following week.

MR. TOCCI: All right.

389

Q (By Mr. Tocci) Did you notify, at this meeting -- did you notify Mr. Mollesi as to the status of Mohamed Ali and J.C. Hamilton? In terms of what classification of employee they were with your company?

A Yes, sir.

Q And what did you notify Mr. Mollesi as to their classification?

A They were classified --

MR. SHERIDAN: Objection, Your Honor. That he notified Mr. Mollesi about it. It's not binding on any party, sir.

MR. TOCCI: Well, it's very pertinent if it -- they're claiming that Local 6, in some way, colluded or with the employer, in coercing these employers to be covered by Local 6's contract. Now, if they're notified by an employer that a man is a mechanic and he comes under their contract, under their union security clause in GC-14, they have a right to sign that man up.

JUDGE CONSTANTINE: I'll sustain the objection, because that's a conversation between him and the union without the presence of Local 59. It's hearsay. The question is, are these men in that unit. If not, are they in a Local 6 unit. I will allow you to show that.

MR. TOCCI: All right, well, that's what I want to do.

JUDGE CONSTANTINE: But I am not going to allow the conversation between him and Mollesi.

Q (By Mr. Tocci) All right, at the time that Mr. Mollesi signed up Mr. Ali Mohamed and Mr. Hamilton, were they included within the unit described in General Counsel's Number 14, insofar as their job duties and classifications?

JUDGE CONSTANTINE: General Counsel's 14 is a contract that you have with 6, 10 and 16.

Q (By Mr. Tocci) Were they covered by that contract?

A After they were signed up, they were.

JUDGE CONSTANTINE: After they were promoted.

Q (By Mr. Tocci) After they were signed up, they were covered by it, but were they within the unit at the time he signed them up? Were they mechanics?

A No.

MR. SHERIDAN: Objection, Your Honor.

Q (By Mr. Tocci) They weren't mechanics when he signed them up?

A They were doing mechanic's work.

Q Well, that's what I meant.

A Yes.

Q All right, now, did you -- were you present when Mr. Mollesi signed them up?

A Yes, sir.

Q Did you hear Mr. Mollesi make any -- have any conversation with these individuals?

A Just what I said before is that he did notice Ali

Mohamed's name and said, "Weren't you the guy that requested mechanic status a year and a half ago or something like that."

Q Did Mr. Mollesi make any statement to these men as to their -- as to their obligations to join Local 6 or whether they were required to. Did he make anything in that reference?

A Definitely not. He asked them if they were doing so of their own free will and accord.

Q What did they respond?

A They said, definitely they wanted to.

Q All right, now, in the past while you were a principal in Desco, had you upgraded individuals who had been employed by you in one classification -- had you upgraded them to mechanics?

MR. SHERIDAN: Objection, Your Honor.

JUDGE CONSTANTINE: I'll sustain the objection. It isn't a question of upgrading. The question is who is this unit and who isn't.

MR. TOCCI: Yes, I understand, Your Honor, but I think we're allowed to show the company practice and the union practice in the past as to upgrading and inclusion within the Local 6 unit or the Local 16 unit as bearing upon their conduct in this -- at the time referred to in this complaint to show that what they did here was a practice and was not --

392

this by Mr. Mohamed?

A No, I was not.

JUDGE CONSTANTINE: I would like to warn you, Mr. Sheridan, please don't object until the question is completed.

MR. SHERIDAN: I'm sorry.

JUDGE CONSTANTINE: Actually, you interrupted him in the middle of a sentence.

MR. SHERIDAN: I'm sorry, Your Honor.

Q (By Mr. Tocci) When Mr. Mollesi signed up these two gentlemen, Mr. -- these two gentlemen at that meeting, did he inquire of you as to whether they were doing mechanic's work, at the time?

A Yes, he did.

Q And what did you respond?

A In the affirmative.

Q Now you had a meeting with Mr. Vince Riggi, also at the job site?

A Yes.

Q And present at this meeting were yourself, Riggi, King, Mr. Sagotto, Morada, Capolla, Sotirou, and Evangelidis?

A Yes.

Q Now you stated that you had promoted Evangelidis to a classification called improver and Sotirou to a classification called improver, is that correct?

A Yes, sir.

Q Can you elaborate on -- well, I'll withdraw that. Can you tell me, in what bargaining unit the classification of improver is encompassed?

MR. SHERIDAN: Objection, Your Honor, the contract speaks for itself.

JUDGE CONSTANTINE: He has a right to say whether the contract covers improvers or not. Unless the contract specifically says no improvers. He has a right to explain it. Go ahead.

THE WITNESS: The improver classification is in our NAADAF agreement.

Q (By Mr. Tocci) Your NAADAF agreement?

A Which is the tri-party agreement?

Q Yes. And is that NAADAF agreement incorporated by reference in General Counsel's 14, the agreement with Local 6 and 16?

A Yes, it is.

Q So it is a classification within the Mason's unit?

A Yes, sir.

Q Now, you also stated that you had promoted Sagotto, Capollo, Morado who were at this meeting with Riggi and Psarras and one other. No, that would be the other four, I think. That you had promoted them to mechanics?

A Yes, sir.

Q And the mechanics would be encompassed within the Local

16 bargaining unit?

A Yes, sir.

Q And, at this meeting --

A I don't recall whether Psarras got full mechanic or improver.

Q Right.

A But I'm positive of Capollo, Sagotto --

Q And Marado?

A And Marado.

Q Right.

A They were full mechanics.

Q But Psarras, you said, it might have been either improver or mechanic?

A Yes.

Q But in any event, he might have been promoted into the Mason's bargaining unit?

A Yes, sir.

Q And did you, when Mr. Riggi was at this meeting with you, did he ask you whether these men were mechanics or improvers?

A Yes, he did.

Q And what did you reply?

A I told him that I strongly felt that the Marodo, Sagotto and Capollo were well qualified to be mechanics as they had been doing this type of work for numerous years and as I said, I'm not positive about Psarras. Whether he got full mechanic status or improver status but then I did feel that the -- those that were promoted to improver were qualified to be improvers.

Q Right and this was related to Riggi at this meeting?

A Yes, sir.

Q And then he proceeded to accept initiation fees or whatever they testified to?

A Yes, sir.

Q Now --

A Incidentally the comments that Riggi made were made to me personally. I don't think that anybody -- any of the workers were there.

Q Now was Sagotto a member of 59 prior to January, '75?

A I believe so.

Q And how about Marodo?

A Likewise.

Q Capollo?

A Yes, sir.

Q Psarras?

A (No response.)

Q If you know -- I mean, I don't want you guessing.

A He had just come -- his first employment with us, with Desco, was in October of 1974.

Q All right.

A And that's when he -- what union he joined I had no idea.

Q All right, how about Sotirou or Evangelidis, do you know if they --

A They were in no unions whatsoever.

Q They were not?

A No.

Q Had Sagotto, in the past, asked to be upgraded to mechanic?

A Numerous times.

MR. SHERIDAN: Objection.

JUDGE CONSTANTINE: I'll sustain the objection. It doesn't matter whether he did or not. The only question is, is he in the unit or is he out of the unit. It doesn't matter whether he -- even if he's competent, the Employer can put anybody he wants in any unit he wants. The question is, what unit was he in.

Q (By Mr. Tocci) Now you were present at this meeting when Mr. Riggi spoke to these men?

A Yes, sir.

Q Did he indicate to them their obligation to join Local 16? What it was or what it was not?

A He definitely told him that it was of their own free will and accord and that they didn't have to join if they didn't want to.

397

Q Now, you stated that -- you made a statement as to certain remarks made by Mr. Riggi as to the work your company was doing, the men who were doing it, and as to whose jurisdiction it should be, whether it should be masons or whatever other union. Do you recall your making that statement on the stand?

A Yes, I do.

Q Now, when did Mr. Riggi make this statement to you?

A Long after the men had signed up and actually they were made to me personally and nobody --

JUDGE CONSTANTINE: No, the question is when did he make the statement?

THE WITNESS: Long after the men had been signed up and were working on the job.

JUDGE CONSTANTINE: All right.

Q (By Mr. Tocci) And would you say -- can you give me an approximation of how many weeks or months after February, '75, he made this statement?

A It was made the same day.

Q Oh, the same day.

A Later on in that day. That's why I confused myself and --

Q Okay, all right, now where was this statement made, do you remember -- in a particular room at the job site or can't you recall?

A Oh, it was on the job site someplace. I think possibly in the parking garage when we were walking out to our cars.

Q Now -- and who was present when Mr. Riggi made that statement to you?

A Just Mr. Riggi and myself.

Q Were there any employees within listening distance of you and Mr. Riggi when he was making this statement?

A No, I don't believe so.

Q Now you say that these men were promoted -- these nine men, I believe -- eight men you've mentioned. Some were promoted to mechanics, some to improvers. Now, did this upgrading or promotion result in their receiving more pay per hour?

A Yes, sir.

MR. TOCCI: I have no further questions.

JUDGE CONSTANTINE: Then it's to you, Mr. Sheridan or Mr. Mulkern, I don't know who wants to take cross.

CROSS EXAMINATION

Q (By Mr. Sheridan) So its clear, Mr. Cordi, you testified that, according to you, what you say happened. What Mr. Sagotto, Mr. Capolla, Mr. Maroda, Mr. Mohamed, Mr. Hamilton, and Mr. Psarras were as you say promoted, is that correct?

A Yes, sir.

Q Did this occur after the meeting, sir, with Mr. Mollesi and Mr. Riggi? Did the promotions occur after the meetings?

A The promotions --

Q Or did they occur at the same time as the meetings?

A The same time.

Q And how about Mr. Evangelidis and Mr. Sotirou?

A The same.

Q Same thing?

A yes.

Q Now, I believe you testified on direct that -- correct me if I'm wrong, that you do not have helper's work, was that your testimony? At your company now.

MR. TOCCI: I object to that because he testified that he does have one helper.

THE WITNESS: He's not working as a helper though.

MR. TOCCI: Oh, he is not, I'm sorry.

THE WITNESS: He's working as a mechanic.

MR. TOCCI: I'm sorry.

Q (By Mr. Sheridan) Do you have helper's work?

A No, we don't.

Q Do you have any -- is there any unloading done of materials?

MR. SMITAS: I'll object. You did not allow me to go into any of this narrative on direct examination.

MR. SHERIDAN: That's not true, your honor. He testified that he did not have helper's work.

MR. SMITAS: You did not allow me to go into any testimony regarding the nature of the work performed by the employees for this employer.

JUDGE CONSTANTINE: I'm not asking him about the nature. He has the right to ask if there's anyone performing certain work. That's different.

MR. SMITAS: It's not different from what my questioning was on direct examination.

JUDGE CONSTANTINE: All right, I'll overrule the objection. You may answer the question.

THE WITNESS: Well, you haven't established that that's helper's work.

Q (By Mr. Sheridan) Well, the question -- please answer the question as I ask it, Mr. Cordi. Do you have unloading work done at your company? Unloading of your materials done at your company?

A Yes, it is.

Q And do employees do that?

A Yes, they do.

Q Do you have the handling and distribution of your materials, is that done at your company?

A What do you mean by handling and distribution?

Q You don't understand what handling and distribution of materials is?

A No, to what extent?

Q The materials that you have handled.

A Our painters take --

Q The question, Mr. Cordi, that I asked you, is do you have that type of work? Is that done at your company?

A Yes, it is.

Q Do employees do that work?

A Yes, they do.

Q The materials that you use. Do they have to be mixed?

A Yes, they do.

Q And do employees mix it?

A They do.

Q And is there grinding done at your company?

A Yes, there is.

Q And do employees do that?

A Yes, they do.

Q Is there finishing and polishing done? At your company.

A Of what?

Q Is there any type of polishing or finishing done at your company?

A It depends on what you would call finishing and polishing.

Q Well, do you know what polishing is?

JUDGE CONSTANTINE: That's a good question. I don't know what you mean by finishing.

Q (By Mr. Sheridan) All right, let's say polishing. Is polishing done?

A What?

Q Any kind of polishing?

A Door knobs?

Q The question I asked is there any polishing done of the materials are made by your employees?

A No. In the sense that I know the word polishing, the answer is no.

Q There's no polishing done?

A No.

Q And is there any clean-up work done at your company?

A Yes.

Q Do employees do that?

A Yes.

JUDGE CONSTANTINE: Let me ask you this. Assuming there is this work, you mean that he can't decide who shall do certain work. That once there is work that he can't transfer it from this group to that group?

MR. STIMAS: Well, that's one of the issues in the case, Your Honor. That's one of the issues that I attempted to bring out and couldn't.

JUDGE CONSTANTINE: Well, I'm going to sustain his objection. You can't go into that.

MR. STIMAS: Well, I didn't object.

JUDGE CONSTANTINE: Oh.

MR. STIMAS: I was precluded from doing that.

JUDGE CONSTANTINE: Now, are you withdrawing your objection so you can bring it out on rebuttal or on redirect? No, sir. I'm not going to let you.

MR. STIMAS: I never made an objection to that.

JUDGE CONSTANTINE: All right.

Q (by Mr. Sheridan) All right, Mr. Cordi you testified to two separate meetings, one with Mr. Mollesi and one with Mr. Riggi, where certain employees were present, is that correct?

A Yes.

Q How did the employees get to the meeting? How did they know about it?

A The meetings took place on the job where they worked.

Q Right, but how did they know that they were supposed to go to these meetings?

A They were informed.

Q By who?

A Our supervisor.

Q Mr. King?

A Yes.

Q Right, he told them to come to the meetings?

A No, he told them to report to work.

Q To report to work? How did they know to go to the meeting in the office?

A He informed them that we would be there.

Q Right and they were supposed to go there, isn't that correct? Mr. King told them about that.

A They wanted to.

Q If they wanted to -- Now I believe, how long was the meeting with the employees and Mr. Mollesi?

A (No response.)

Q Approximately how long?

A I didn't keep track of the time.

Q Do you know about how long? Is it an hour? A half an hour? Fifteen minutes?

A Ten minutes, fifteen minutes.

Q And how about when Mr. Riggi was there?

A The same.

Q And when was this? When were these meetings?

A As previously reiterated.

Q Well, when, what time of the day?

A About noontime.

Q Was it during the lunch hour?

A It could have been.

MR. SHERIDAN: Nothing further, Your Honor.

JUDGE CONSTANTINE: Is there any redirect?

MR. STIMAS: My questions are -- I don't know if you're

JD-839-76
Albany, NY

405

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

DESCO VITRO-GLAZE OF SCHENECTADY, INC., 1/

and

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO 2/

Case No. 3-CA-5993
(Remand)

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL
UNION, AFL-CIO 3/
(Desco Vitro-Glaze of Schenectady, Inc.)

and

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

Case No. 3-CB-2498-1
(Remand)

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL
UNION, AFL-CIO 4/
(Desco Vitro-Glaze of Schenectady, Inc.)

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

Case No. 3-CB-2498-2
(Remand)

1/ Herein Respondent Desco.
2/ Herein Local 59 or the Helpers Union
3/ Herein Respondent Local 6
4/ Herein Respondent Local 16. Collectively, Local 6 and Local 16 will be referred to herein as Respondent Unions or the Mechanics Unions.

Paul V. Mulkern, Jr., Esq.,
of Albany, NY, for the
General Counsel.
Daniel J. Smitas, Esq.,
of Albany, NY, for the
Respondent-Employer.
Dominick Tocci, Esq.,
of Albany, NY, for the
Respondent Unions.
Mr. Gerald Bombassaro, of
Pittsburgh, PA, and
Mr. David Lavenberg, of
Albany, NY, for the
Charging Party.

405 A

SUPPLEMENTAL DECISION

Statement of the Case

MICHAEL O. MILLER, Administrative Law Judge: This matter was heard in Albany, New York, on June 2 and August 3, 4, and 5, 1976, upon charges filed by Local 59 on March 4, 1975 5/ and amended on April 14, and a consolidated complaint which issued on April 18 and was amended on May 27, June 2 and at the hearing herein. The complaint, the substantive allegations of which were denied by each Respondent, alleged that Desco violated Sections 8(a)(1)(2)(3) and (5) by interrogating its employees, assisting and recognizing Locals 6 and 16, and applying Local 6 and 16's contracts containing union security clauses to its helper-employees, refusing to recognize and bargain collectively with Local 59, and unilaterally changing terms and conditions of employment of its helper-employees without bargaining with Local 59. It further alleged that Locals 6 and 16 violated Sections 8(b)(1)(A) and (2) by accepting the fruits of that assistance and by causing or attempting to cause Desco to unlawfully discriminate against its employees in violation of Section 8(a)(3).

The hearing was held by the undersigned herein pursuant to an Order of the Board, dated March 1, 1976, directing a hearing *de novo*. A prior hearing had been held, before a different Administrative Law Judge, and a Decision therein had issued on December 8, 1975. The Board found that in that hearing both General Counsel and the Respondents had been denied due process of law because they had been denied the opportunity to fully present and develop relevant evidence. Accordingly, it remanded the matter for this *de novo* hearing.

Upon the entire record in this case, 6/ including the brief filed by the General Counsel, and my observation of the witnesses and their demeanor, I make the following:

5/ All dates hereinafter are 1975 unless otherwise specified.
6/ General Counsel's unopposed Motion to Correct Transcript is granted.

Findings of Fact

I. Respondent Desco's Business and the Unions' Labor Organization Status

Respondent Desco, a New York corporation, is engaged at Schenectady and Albany, New York as a construction contractor in the application of floorings, decks, and coatings. During the year preceding the issuance of the consolidated complaint said Respondent purchased goods and materials valued in excess of $50,000, of which goods and materials valued in excess $50,000 were transported directly to it in New York State directly from other States. I find and conclude that Desco is an employer within the meaning of Section 2(2), and is engaged in commerce within the meaning of Section 2(6) and (7), of the Act.

Local 6, Local 16 and Local 59 are and at all times material have been, labor organizations within the meaning of Section 2(5) of the Act.

II. The Unfair Labor Practices

A. Collective Bargaining History

The controlling issue to be determined herein is whether, prior to January 1975, Desco had recognized and maintained collective bargaining relations with Local 59 on behalf of an appropriate collective bargaining unit of its employees, the helpers.

Desco had come into being around 1953, having been founded by Joseph T. LePore, Jr. It was engaged in the installation of terrazzo flooring. Initially, this involved heavy cementuous materials. Gradually since 1953, the materials have changed and been improved through the introduction of thinner, lighter compositions utilizing latex, epoxies and acrylics. Traditionally in the area, and specifically at Desco during the period of LePore's ownership of the business, 1953-1973, two classifications of employees worked at the installation of this flooring. Employees known as helpers did the unloading, mixing and distribution of the flooring materials and prepared the floor for the installation. Other employees, "mechanics," worked with trowels, applying the composition to the floor. The helpers would then clean, sand, grind, and grout the floor.

During the period of LePore's management, Desco maintained collective bargaining relationships with Respondent Locals 6 and 16 on behalf of the mechanics. These relationships were maintained through Desco's membership in the Eastern New York Construction Employer's, Inc., an association to whom it assigned its collective bargaining rights. Desco continued to maintain contractual relations with Locals 6 and 16, covering the mechanics, subsequent to Joseph Cordi's acquisition of the business from LePore, in early 1973.

According to the testimony of LePore, which I credit, at all times during his tenure Local 59 was recognized as the collective-bargaining representative of the helpers. Desco, however, executed no contracts with Local 59; neither did it belong to any associations through which it contracted with Local 59. Rather, it acceded to the terms of the agreements negotiated between Local 59 and the Capitol District Tile, Marble, Terrazzo and Slate Contractors' Association. When requested, as in 1967, Desco executed letters of intent to be bound by the terms of the agreement to be negotiated by those parties and to pay the wages and benefits of that agreement, retroactively. It was the wages and benefits prescribed in the agreements between Local 59 and this Association which Desco paid to its helpers throughout this period. During this same period, Desco's helpers were either members of Local 59, were referred to it by Local 59, or if hired off the street when the Local had no helpers available, were referred to that Union if their performance was satisfactory to the employer and they were interested in taking up the trade.

Joseph Cordi became employed by Desco in February of 1972, in order to learn the business and to introduce a painting operation into it, with the intention of acquiring that business from LePore. The acquisition was completed about January 1973. LePore testified that by virtue of Cordi's position and activities during that period, Cordi had to be aware of Local 59's status. When asked whether he was aware of Local 59's representative status, Cordi, however, testified before me that he "was not that familiar with Local 59 and their activities." In his testimony in the prior hearing (of which I have taken administrative notice without limitation as to its evidentiary effect), Cordi admitted that he "was aware" at that time "that Local 59 was the Collective-Bargaining Representative for the Tile, Marble and Terrazzo Workers Helpers." Based upon LePore's testimony, Cordi's admissions in the earlier hearing and the weighty probability that a businessman acquiring a labor-intensive business in a heavily unionized area would ascertain the collective bargaining obligations of the business before committing his effort and capital, I conclude that Cordi did, in fact, acquire Desco with awareness of Local 59's status as the helpers' collective bargaining agent.

Similarly, the record reflects that for the period from February 1973 until December 1974, Desco continued to pay its helpers the wage rates specified in the contract between Local 59 and the Capitol District Tile, Marble, Terrazzo and Slate Contractors Association. In the initial hearing, Cordi admitted to having a copy of that contract and utilizing that wage schedule. In the instant hearing, however, Cordi asserted that he was only paying prevailing wage rates. In addition to its compliance with the contractual wage rates, Desco made monthly payments to several union-maintained funds on behalf of its employees. Thus, each month after December 1972, Cordi signed a "Monthly Report of Savings Deposits for Tile, Marble and Terrazzo Workers Helpers of the Metropolitan Capital District," listing certain employees and the amounts deposited in each employee's name. Similarly, Cordi executed monthly reports, listing those same employees, and detailing contributions on their behalf to the Capital Area Mason's Pension Fund. That form provided for separate itemization of deposits to three additional funds but set forth that only pension funds were required on behalf of "No. 59-Tile Helpers." According to these report forms, Cordi did not make contributions on behalf of these employees to the other funds, as would have been required for members of Locals 6 or 16. The deposits reflected in these 2 monthly reports were consistent with the employer obligations set forth in Article II of the agreement between Local 59 and association with which it negotiated.

These same monthly reports indicate that between December 1972 and December 1974, Desco employed between four and nine employees on whose behalf these payments were made. Throughout 1974, there were five or six such employees, comprised at various time of Christos Glantzis, Raymond Ingoldsby, Allie Mohamad, Dominick Marotta, Giovanni Segatto, Domenico Coppola, and Constantinos Psarras. Glantzis was a member of Local 59 until October 1974, when he was upgraded to mechanic and left the local. Ingoldsby's name does not appear on the forms after July 1974 and Psarras was hired in October 1974. As of December 1974, according to the reports, there were five employed as helpers: Marotta, Mohamad, Segatto, Coppola and Psarras. All were members of Local 59; Cordi admitted knowing of the membership status of the first four so listed. Psarras testified, additionally, that when he was hired he was told by Kenneth King, Desco's superintendent (an admitted supervisor), that he would have to join Local 59. In the following month, three additional employees, contended by General Counsel to be helpers, were hired: J.C. Hamilton, Dimitrios Evangelidis, and John Sitiriou. The record reflects that Hamilton and Sitiriou made efforts to join Local 59.

Respondent Desco contended, in substance, that because of changes in the industry, there ceased to be work for a separate unit of helpers, that all of its employees worked as a team interchangeably performing the same functions. The record evidence fails to bear out this contention. Thus, the changes which occurred in the industry had been taking place throughout Desco's existence and involved the materials being installed rather than the division of work. The employees themselves credibly testified that they spent the majority of their time performing the work traditionally assigned to the helpers. On occasion, for small portions of their time, the more experienced helpers did some work with the trowel. 7/

Based upon all of the foregoing, I conclude that at all times material herein, from Desco's 1953 inception to February 1975, there was a unit of helpers employed by Desco, described in the complaint and Association contract as follows:

> All marble, stone and slate publishers, rubbers and sawyers, tile and marble setters helpers, and terrazzo workers helpers employed by Respondent Desco at its plant and job sites within the geographical jurisdiction of Local 59, excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act, and all other employees.

This unit consists of a clearly identifiable and functionally distinct group of employees, with common separate interests, and is a traditional separate craft unit within the construction industry. The employees within this unit receive different wages and fringe benefits than are received by those considered mechanics. The Board deems such a separate unit appropriate for the purposes of collective bargaining. See R.B. Butler, Inc., 160 NLRB 1595 (1966) and cases cited therein. Within this unit, I further conclude, Local 59 has consistently maintained majority status and, at least until December 1974, Desco recognized Local 59 as its collective-bargaining representative.

B. The Refusal to Bargain

On December 12, 1974, David Lavenberg Local 59's business agent, sent Cordi copies of the Association agreement with which, as the prior discussion reveals, Desco had been complying. When Lavenberg asked him to sign that agreement, at that time and again later in the month, Cordi put him off. When Lavenberg repeated his demand in late January, Cordi finally told him that he had no intention of signing the agreement.

At a jobsite meeting on February 18, Gerald Bombassaro, an international representative of the Helper's Union, repeated the request that Cordi sign the agreement. According to Bombassaro, 8/ Cordi stated

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7/ The record reflects that the Helper's Union was utilized as a training ground or apprenticeship program for mechanics. It was an accepted practice for experienced helpers to move on to the mechanic's classification and become members of a mechanic's local, with the approval of both the employer and the Helper's Union business agent. This was the progression which Glantzis followed; indeed, the fact that he followed this progression tends to establish the existence of the helper's unit.

8/ To the extent that there are conflicts between Bombassaro's testimony and that of Cordi, I credit Bombassaro, with whose demeanor I was favorably impressed. Moreover, Bombassaro's testimony was corroborated by that of Lavenberg, another credible witness.

that he had changed his method of doing business, no longer needed Local 59 members to do his work and therefore had no reason to sign an agreement with Local 59. Cordi spoke of alleged harassment by business agents of Local 59 and alluded to his membership in another association (National Association of Decorative Architectural Finishers-NADAF), pursuant to which he was party to contracts with a "Chemical Products" division of the Bricklayers (BMPIU) and Painters (IBPAT) International Unions. Cordi refused to sign Local 59's agreement. Cordi testified that prior to January 1975, he was under the mistaken impression that Desco was a member of NADAF. Upon learning that he was in error, he alleged, Desco joined NADAF sometime in January 1975. Assuming the credibility of this testimony, Desco's membership in NADAF as of January 1975 is irrelevant. Selection of a collective bargaining representative is the right of the employees, not the employer, and an employer cannot substitute another representative for that chosen by his employees merely by joining an association which purports to contract with another labor organization. Moreover, the NADAF-BMPIU-IBPAT Jurisdictional and Work Rules Agreement placed in evidence by Desco only purports to assign the installation of the materials according to traditional work techniques (Bricklayers use a trowel, Painters use rollers or brush). It does not appear to preclude assignment of traditional helper's work to members of some other labor organization. Finally, in this regard, I note that Cordi's lack of specificity as to when he joined NADAF or what authority he assigned to that organization, and the absence of any documentary evidence corroborating Desco's membership therein, casts considerable doubt as to the veracity of his testimony.

When in late January, Desco's employees who were within the previously described helper's unit made application to Locals 6 and 16 (discussed in more detail infra.) Cordi raised their wages and/or fringe benefits to the higher rates specified in the agreements maintained by those unions. Cordi alleged that this was the result of upgrading or promotion, but the credible evidence establishes that there was no change in the work of these employees. The newest and least experienced employees, Psarras, Evangelides and Sitiriou were entitled "improvers," a classification below that of "mechanic." They received no wage increases but some improvement in fringes.

The foregoing evidence establishes that Desco, after recognizing Local 59 for a long course of years, declined to sign the contract to which it was obligated and with which it had been complying, refused to continue its recognition of that Union during the term of the agreement [9] and not withstanding that there was no evidence of any loss of majority, purported to recognize other labor organizations as the representatives of the same employees, and changed the wages and benefits accorded to the unit employees without negotiation with representatives of Local 59. By all of the foregoing conduct, and as will be seen in the next section, by conduct intended to undermine Local 59's status as bargaining representative, I conclude, in agreement with the General Counsel, Respondent Desco has violated Section 8(a)(5) of the Act.

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[9] See Marquis Elevator Company, Inc., 217 NLRB No. 78 (1975); Manor Research, Inc., 165 NLRB 909 (1967).

C. Alleged Violations of Sections 8(a)(1) and (2)-8(b)(1)(A) and (2)

On January 24, 1975, Lavenberg came on to Desco's jobsite in the Empire State Plaza. He received applications for union membership and down payments on the initiation fees from J.C. Hamilton and John Sitiriou. Shortly thereafter, Sitiriou told superintendent King that he had joined Local 59. [10]

On January 26, Cordi called Lavenberg and accused him of sneaking on to the jobsite and coercing employees into applying for union membership. [11] Lavenberg denied doing so and agreed to meet Cordi on the jobsite the following day. On January 27, before Lavenberg came to the site, Cordi and King went to Sitiriou. They asked Sitiriou whether he had joined Local 59. He replied that he had and that he had given Local 59 a $100 deposit. He asked whether he had done something wrong and both replied, "No, that's okay."

When Lavenberg arrived, he went with Cordi and King to Hamilton. As Lavenberg testified, [12] Cordi asked Hamilton whether Lavenberg had coerced him into making his application. Hamilton replied affirmatively.

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[10] King's response (undenied, as King did not testify), to the effect that Sitiriou could have waited a couple of weeks before joining, is further acknowledgment of Local 59's presence as the helper's bargaining representative.

[11] Cordi claimed that King had reported pressure being placed against these employees. Hamilton did not testify and Sitiriou denied that his application was other than an act of free will. The record contains no probative evidence of coercion upon these or any other employees by Local 59.

[12] To the extent that there are conflicts between Lavenberg's testimony and Cordi's, I credit Lavenberg. Cordi's testimony, throughout, is best characterized by its lack of responsiveness, its tendency to be shaded so as to improve Respondent Employer's arguments, (as, for example, Cordi's claims that the employees did not have specific job responsibilities but worked as a "team," that he paid "prevailing rates" rather than complying with a contract, and that he did not know "that much" about Local 59 when he took over the business) and the contradictions between his testimony in the initial and remanded hearings. Lavenberg's testimony was essentially corroborated by Sitiriou and I was more favorably impressed by the demeanor of Lavenberg and Sitiriou than by that of Cordi.

Lavenberg denied that there was any coercion but returned Hamilton's deposit to him. They then went to Sitiriou and the same question was asked. Cordi asked Sitiriou whether he was with them (Local 59) or with him (Cordi). Sitiriou said that Cordi was the man who paid him so he was with Cordi. Cordi asked him if he wanted his money back and, when Sitiriou said that he did, Lavenberg returned his deposit.

General Counsel contended that by the foregoing conduct, Respondent Desco interrogated its employees and solicited them to withdraw from Local 59, in violation of Section 8(a)(1) of the Act. I agree. Cordi's statements and actions made clear to these two new employees that he did not want them to join Local 59, that he wanted them to withdraw their membership applications and that going "with him" rather than "with them" was what was expected of them. By this conduct, Desco interfered with, restrained and coerced Hamilton and Sitiriou in the exercise of their right to join Local 59, and violated Section 8(a)(1).

On January 29, King told Psarras:

> the company decide to not have anymore helpers, so instead of losing your job, do you mind if you become a mechanic.

Psarras asked how he would become a mechanic and King told him:

> you're going to join another Union but you're still going to do the same job as a helper you are now but we're going to stop having anything to do with the helpers. So what do you want to do[?]

King also asked Mohamad whether he wanted to become a mason. Mohamad asked when it would take place and what he would be doing. King told him that his job would not change and that the business agent from Local 6, Aldo Malossi, would be there to speak to him on the following day. According to Cordi, King similarly surveyed the other helpers.

On January 30, King told Mohamad that Malossi was present at the jobsite and he could sign up. They went to the office. Mohamad questioned what his status would be in Local 6 and was assured that he would be a journeyman. He tendered a deposit to Malossi and received a receipt. Cordi testified that Hamilton was similarly brought to the office, he (Cordi) asked Hamilton if he was interested in becoming a mechanic, Hamilton said that he was, and Hamilton gave Malossi some money.

On January 31, the scene was repeated with Vince Riggi, business agent of Local 16 and employees Psarras, Sitiriou, Evangelides, Marotta, Segatto and Copolla. Cordi asked them if they wanted to join Local 16 and loaned money to Psarras and Sitiriou to make down payments on the initiation fees. Riggi returned to the jobsite office on February 7 and, again in the presence of Cordi and King, requested money for the down payments from Psarras, Evangelides and Sitiriou. They made arrangements to pay. Thereafter, Evangelides and Sitiriou made an attempt togive Riggi additional money, which Riggi refused, apparently because someone was questioning the procedure.

On February 27, as he was passing out their paychecks, Cordi asked Psarras and Evangelides whether they had completed their payments to Local 16. They replied that they had not and Cordi told them that they had better do so or they would lose their jobs. 13/ Cordi admitted that its contracts with Locals 6 and 16 were extended to cover the helpers.

No further efforts were made by either Local 6 or Local 16 to collect initiation fees or dues and neither Union sought to invoke the union security-clause of their agreements against any of these employees.

As the foregoing evidence makes clear, Respondent Desco was the moving force in its employee's alienation from Local 59 and their applications for membership in Locals 6 and 16. By such assistance and support of those unions, at a time when it was obligated to continue recognition of Local 59, and by its recognition of Locals 6 and 16 for those employees and the extension of its contracts with those Unions to those employees, Respondent Desco has violated Sections 8(a)(1) and 8(a)(2) of the Act. By accepting that support and the extension of their contracts to the employees so coerced, Respondent Locals 6 and 16 violated Section 8(b)(1)(A). International Ladies Garment Workers Union (Bernhard-Altmann Texas Corp.) v. N.L.R.B., 366 U.S. 731, 738-739 (1961); Captive Plastics, Inc., 209 NLRB 749 (1974). Contrary to Respondent Union's contentions, scienter is not an element of the violation. Even assuming that Riggi and Malossi were unaware of Desco's obligations toward Local 59 (which is most unlikely) or of Cordi's unlawful support of their organizations, the acceptance of recognition under such circumstances violates the Act. Berhard-Altmann, supra.

Moreover, as the contracts extended to these employees contained provisions requiring union membership as a condition of continued employment, Respondent Desco has violated Section 8(a)(3) and Respondent Locals 6 and 16 have violated Section 8(b)(2) of the Act. Melbet Jewelry Co., Inc., 180 NLRB 107 (1969).

D. The Unfair Labor Practice Strike

On March 31, Local 59 began a strike against Desco and picketed for a period of about 2 weeks at the Empire Plaza jobsite and for 1 week at another Desco jobsite. The strike and picketing were caused by the above-

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13/ Psarras' and Evangelides' testimonies are mutually corroborative. Cordi's testimony acknowledges that he asked them what their status was with Local 16 and advised them of the risks of running afoul of the union-security requirements in Local 16's contract.

described conduct and, I find, this was an unfair labor practice strike. 14/ On June 19, Lavenberg made an unconditional offer to return to work on behalf of all of Desco' employees.

III. Additional Conclusions of Law

1. The Helpers employed by Respondent Desco constitute an appropriate unit for collective bargaining.

2. By interrogating its employees concerning their union membership and by soliciting them to withdraw their membership in Local 59, Respondent Desco has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

3. By soliciting its employees to join Respondent Locals 6 and 16, by assisting Respondent Locals 6 and 16 to secure membership applications from its employees, by threatening its employees with discharge unless they joined Respondent Locals 6 or 16, by recognizing Respondent Locals 6 and 16 as the collective-bargaining representative of its helpers and by applying its contracts with Respondents Locals 6 and 16 to its helpers, Respondent Desco has violated Section 8(a)(2) and (1) of the Act.

4. By unlawfully applying its union security contracts with Respondent Locals 6 and 16 to its helpers, Respondent Desco has violated Sections 8(a)(3) and (1) of the Act.

5. By the foregoing conduct which tended to undermine Local 59's status as collective bargaining representative of Respondent Desco's helpers, by its withdrawal of recognition from Local 59 and its refusal to meet, negotiate, or execute its agreement with Local 59, and by its unilateral changes in the terms and conditions of employment of its helpers, Respondent Desco has violated Section 8(a)(5) and (1) of the Act.

6. By accepting Respondent Desco's assistance in their organizational efforts among Desco's helpers, by demanding and accepting recognition as the exclusive collective-bargaining representative of Respondent Desco's helpers, by applying their collective-bargaining contracts with Respondent Desco to the helpers employed by Desco, and by extending the union security provisions of those contracts to those helpers, Respondents Locals 6 and 16 have violated Section 8(b)(1)(A) and (2) of the Act.

7. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

14/ Allie Mohamad and Dimitrios Evangelides participated in the strike. After approximately 1 week, Evangelides had returned to work. However, he rejoined the strike prior to its conclusion.

8. The strike which began on March 31, 1975 was caused and prolonged by Respondent Desco's unfair labor practices and was an unfair labor practice strike.

The Remedy

Having found that Respondent Desco and Respondent Locals 6 and 16 have engaged in unfair labor practices in violation of Section 8(a)(1)(2)(3) and (5) and 8(b)(1)(A) and (2) of the Act, I shall recommend that they take the actions described in the following section of this Decision, entitled "Order," which are necessary in order to effectuate the policies of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 15/

ORDER

A. Respondent Desco, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Interrogating its employees concerning their union membership, soliciting its employees to withdraw their membership in Local 59 or any other labor organization, soliciting its employees to join Local 6 or 16, or any other labor organization, threatening its employees with discharge unless they joined Local 6 or Local 16, or any other labor organization, or otherwise assisting Locals 6, 16 or any other labor organization to secure memberships from its employees.

(b) Recognizing Local 6 or Local 16 as the collective bargaining representative of its helpers and extending its contracts with Locals 6 and 16 including the union-security provisions thereof, to its helpers.

(c) Withdrawing recognition from and refusing to recognize and bargain with Lcoal 59 as the exclusive collective-bargaining representative of its helpers or refusing to execute, upon request, its collective-bargaining agreement with Local 59.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

15/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Respondent Locals 6 and 16 as the collective-bargaining representatives of its helpers unless and until said labor organizations have been duly certified by the National Labor Relations Board as the exclusive representative of such employees.

(b) Jointly and severally with Respondent Locals 6 and 16 reimburse its helpers, including former employees, for all initiation fees, dues, and other monies paid or checked off pursuant to its contracts with those labor organizations, with interest at 6 percent per annum, as provided by the Board in Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

(c) Upon request, bargain collectively with Local 59 as the exclusive collective bargaining representative of its helpers, and if requested, embody its contract with Local 59 in a written signed agreement.

(d) Offer each of the former unfair labor practice strikers immediate reinstatement to his former position, or, if such job no longer exists, to a substantially equivalent position, without loss of seniority or other rights or privileges, discharging if necessary any replacements hired, and make each of these employees whole for any loss of earnings he normally would have earned from 5 days after the unconditional offer to return to work was made on behalf of the employees, to the date of Respondent Desco's offer of reinstatement, in accordance with the Board's formula set forth in F.W. Woolworth Company, 90 NLRB 289 (1950), with interest thereon at the rate of 6 percent per annum. Isis, supra,

(e) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records concerning payroll, personnel, social security payments, timecards, disbursements and all other records necessary to ascertain the backpay and reimbursement of union fees and dues owed under the terms of this Order.

(f) Post at its office and each of its jobsites copies of the notice attached hereto and marked "Appendix A." 16/ Copies of said notice, on forms provided by the Regional Director for Region 3, after being duly signed by Respondent Desco's representative, shall be posted by Respondent Desco immediately upon receipt thereof, and shall be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to is employees are customarily posted. Reasonable steps shall be taken by Respondent Desco to insure that said notices are not altered, defaced, or covered by any other material.

16/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(g) Post at the same places and under the same conditions as set forth in (f) above, as they are forwarded by the Regional Director, copies of the notices attached hereto and marked "Appendix B" and "Appendix C."

(h) Deliver or mail signed copies of the attached notice marked "Appendix A" to the Regional Director for posting by Respondent Locals 6 and 16, as provided hereinafter.

(i) Notify the Regional Director for Region 3 in writing, within 20 days from the date of this Order, what steps Respondent Desco has taken to comply herewith.

B. Respondent Local 6, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Accepting unlawful assistance or support from Respondent Desco or any other employer in the organization of employees, or accepting recognition or entering into collective bargaining as the representative of Respondent Desco's helpers unless and until certified by the National Labor Relations Board as the exclusive representative of said employees pursuant to Section 9(c) of the Act.

(b) Giving effect to, or requesting Respondent Desco to give effect to, the collective bargaining contract between Respondent Desco and Respondent Local 6 as applied to the helpers employed by Desco.

(c) In any other manner restraining or coercing the helpers employed by Respondent Desco in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with Respondent Desco reimburse Desco's helpers, including former employees, for all union initiation fees, dues and other monies, paid or checked off pursuant to the contract between Respondent Desco and Respondent Local 6, with interest at 6 percent per annum. Isis, supra.

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records necessary to ascertain what is owed in reimbursement of union fees, dues and other monies under the terms of this Order.

(c) Post at its business offices and meeting halls copies of the notice attached hereto and marked "Appendix B." [17] Immediately upon receipt of said notice, on forms to be provided by the Regional Director for Region 3, Respondent Local 6 shall cause the copies to be signed by an authorized representative and posted, the posted copies to be maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 6 to insure that said notices are not altered, defaced, or covered by any other material.

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[17] See preceding footnote.

(d) Deliver or mail signed copies of the attached notice marked "Appendix B" to the Regional Director for posting by Respondent Desco and Respondent Local 16, as provided herein.

(e) Post and maintain at the same places and under the same conditions provided in paragraph B 2(c) above, as soon as forwarded by the Regional Director, copies of the notices attached hereto marked "Appendix A" and "Appendix C."

(f) Notify the Regional Director for Region 3, in writing within 20 days from the date of this Order, what steps Respondent Local 6 has taken to comply herewith.

C. Respondent Local 16, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Accepting unlawful assistance or support from Respondent Desco or any other employer in the organization of employees, or accepting recognition or entering into collective bargaining as the representative of Respondent Desco's helpers unless and until certified by the National Labor Relations Board as the exclusive representative of said employees pursuant to Section 9(c) of the Act.

(b) Giving effect to, or requesting Respondent Desco to give effect to, the collective bargaining contract between Respondent Desco and Respondent Local 16 as applied to the helpers employed by Desco.

(c) In any other manner restraining or coercing the helpers employed by Respondent Desco in the exercise of their rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Jointly and severally with Respondent Desco reimburse Desco's helpers, including former employees, for all union initiation fees, dues and other monies, paid or checked off pursuant to the contract between Respondent Desco and Respondent Local 16, with interest at 6 percent per annum, Isis, supra.

(b) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all records necessary to ascertain what is owed in reimbursement of union fees, dues and other monies under the terms fo this Order.

(c) Post at its business offices and meeting halls copies of the notice attached hereto and marked "Appendix C." 18/ Immediately upon receipt of said notice, on forms to be provided by the Regional Director for Region 3, Respondent Local 16 shall cause the copies to be signed by an authorized representative and posted, the posted copies to be maintained for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Local 16 to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver or mail signed copies of the attached notice marked "Appendix C" to the Regional Director for posting by Respondent Desco and Respondent Local 6, as provided theretofore.

(e) Post and maintain at the same places and under the same conditions provided in paragraph C 2(c) above, as soon as forwarded by the Regional Director, copies of the notices attached hereto marked "Appendix A" and "Appendix B."

(f) Notify the Regional Director for Region 3, in writing, within 20 days from the date of this Order, what steps Respondent Local 6 has taken to comply herewith.

Dated Washington, D.C.
December 22, 1976

Michael O. Miller
Michael O. Miller
Administrative Law Judge

18/ See preceding footnote.

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A TRIAL, THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, WE NOTIFY YOU THAT:

WE WILL NOT interrogate our employees concerning their union membership.

WE WILL NOT discourage our helpers from membership in LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE, AND STONE POLISHERS, RUBBERS, AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO or any other labor organization, and WE WILL NOT encourage our helpers to join LOCAL 6 or LOCAL 16 BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO, or any other labor organization by soliciting them to drop their membership in one organization or soliciting them to join another organization, or by threatening them with discharge unless they join LOCAL 6 or LOCAL 16.

WE WILL NOT assist or contribute support to LOCAL 6 or LOCAL 16 by assisting them to organize our helpers or by recognizing either of them as the collective-bargaining representative of our helpers unless and until they have been certified as such representative by the National Labor Relations Board.

WE WILL withdraw recognition of LOCAL 6 and LOCAL 16 as the collective-bargaining representatives of our helpers and WE WILL NOT apply the collective-bargaining agreements between ourselves and LOCALS 6 and 16 to our helpers.

WE WILL recognize and bargain with LOCAL 59 as the exclusive collective-bargaining representative of our helpers, and, upon request, WE WILL execute a signed agreement embodying the contract between LOCAL 59 and ourselves.

WE WILL offer all unreinstated unfair labor practice strikers immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging if necessary any replacements, and WE WILL make them whole for any earnings lost as a result of our refusal to reinstate them, plus interest at 6 percent per annum.

WE WILL, jointly and severally with LOCAL 6 and LOCAL 16, make our helpers whole for all initiation fees, dues and other monies paid or checked off pursuant to our contracts with those Unions, with 6 percent per annum interest.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

DESCO VITRO-GLAZE OF SCENECTADY, INC.
(Employer)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office,

9th Floor,
Federal Bldg., 111 W. Huron St., Buffalo, NY 14202
(Tel. No. 518 - 472-2215).
(Tel. No. 716 - 432-3119). New Federal Bldg., Clinton Ave., at N. Pearl St., Albany, NY

422

FORM NLRB-4726
(4-71)

APPENDIX B

JD-839-76

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A TRIAL, THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, WE NOTIFY YOU THAT:

WE WILL NOT seek or accept recognition as the collective-bargaining representative of the helpers employed by DESCO VITRO-GLAZE OR SCHENECTADY, INC., unless and until we have been certified as such a representative by the National Labor Relations Board.

WE WILL NOT seek to enforce or apply our contract with DESCO to the helpers employed by that company.

WE WILL, jointly and severally with DESCO, make DESCO'S helpers whole for all initiation fees, dues and other monies paid or checked off pursuant to our contract with DESCO.

WE WILL NOT in any other manner restrain or coerce employees of DESCO in the exercise of rights guaranteed in Section 7 of the Act.

LOCAL 6, BRICKLAYERS, MASONS,
PLASTERERS, MARBLE, TILE AND TERRAZZO
WORKERS INTERNATIONAL UNION, AFL-CIO
(DESCO VITRO-GLAZE OF SCHENECTADY, INC.)
(Labor Organization)

Dated ________________ By ________________________________
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 9th Floor-Federal Bldg., 111 W. Huron St., Buffalo, NY 14202 (Tel. No. 716-432-3119). New Federal Building, Clinton Avenue at N. Pearl St., Albany, NY

FORM NLRB-472t
(4-71)

APPENDIX C

Jd-839-76

NOTICE TO MEMBERS

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

THE NATIONAL LABOR RELATIONS BOARD HAVING FOUND, AFTER A TRIAL, THAT WE VIOLATED THE NATIONAL LABOR RELATIONS ACT, WE NOTIFY YOU THAT:

WE WILL NOT seek or accept recognition as the collective-bargaining representative of the helpers employed by DESCO VITRO-GLAZE OF SCHENECTADY, INC., unless and until we have been certified as such a representative by the National Labor Relations Board.

WE WILL NOT seek to enforce or apply our contract with DESCO to the helpers employed by that company.

WE WILL, jointly and severally with DESCO, make DESCO'S helpers whole for all initiation fees, dues and other monies paid or checked off pursuant to our contract with DESCO.

WE WILL NOT in any other manner restrain or coerce employees of DESCO in the exercise of rights guaranteed in Section 7 of the Act.

LOCAL 16, BRICKLAYERS, MASONS,
PLASTERERS, MARBLE, TILE AND TERRAZZO
WORKERS INTERNATIONAL UNION, AFL-CIO
(DESCO VITRO-GLAZE OF SCHENECTADY, INC.)
(Labor Organization)

Dated ______________ By ______________________________
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office. 9th Floor-Federal Bldg., 111 W. Huron St., Buffalo, NY 14202 (Tel. No. 716 - 432-3119). New Federal Building Clinton Avenue at N. Pearl St. Albany, NY

JPM

D--2584
Schenectady and Albany, N.Y.

FILE
Exec. Sec. O

424

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DESCO VITRO-GLAZE OF SCHENECTADY, INC. 1/

and

Case 3--CA--5993

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL--CIO 2/

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL
UNION, AFL--CIO 3/

and

Case 3--CB--2498--1

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL--CIO

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL
UNION, AFL--CIO 4/

and

Case 3--CB--2498--2

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL--CIO

DECISION AND ORDER

On December 22, 1976, Administrative Law Judge Michael O. Miller issued the attached Supplemental Decision in this proceeding. Thereafter, Respondents

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1/ Herein Respondent Desco.
2/ Herein Local 59 or the Helpers Union.
3/ Herein Respondent Local 6.
4/ Herein Respondent Local 16.

filed exceptions and supporting briefs, and the General Counsel filed cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[5] and conclusions of the Administrative Law Judge and to adopt his recommended Order,[6] as modified herein.

We agree with the Administrative Law Judge, for the reasons stated by him, that Respondent Desco variously violated Section 8(a)(1), (2), and (3) of the Act, and that Respondent Locals 6 and 16 violated Section 8(b)(1)(A) and (2) of the Act.

We also agree with the Administrative Law Judge's finding that Local 59 at all times material was the collective-bargaining representative of Respondent

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[5] The Respondents have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

[6] General Counsel contends that the Administrative Law Judge erred in failing to order Respondents jointly and severally to make Local 59 whole for any dues, fees, and assessments it lost by virtue of Desco's unlawful assistance to, and recognition of, Locals 6 and 16. We find no merit in this contention. The Administrative Law Judge properly ordered Respondents jointly and severally to reimburse Desco's helpers for any dues, fees, and assessments they may have paid to Respondent Locals 6 and 16 by virtue of the latter's collective-bargaining agreement with Respondent Desco. In these circumstances, a further requirement that Respondents also reimburse Local 59 for the same moneys would not be warranted.

Desco's employees classified as helpers and that Respondent Desco violated Section 8(a)(5) of the Act by, inter alia, withdrawing recognition from Local 59. In light of these findings, we find that Respondent Desco further violated Section 8(a)(5) by unilaterally discontinuing its monthly contribution on behalf of its helpers[7] to the pension and savings fund maintained by Local 59. Accordingly, we shall order that Respondent Desco make whole the employees represented by Local 59 by paying into the aforesaid funds all contributions which it has, since January 1975, failed to deposit therein on their behalf.

We disagree, however, with the Administrative Law Judge's finding that Respondent Desco violated Section 8(a)(5) of the Act by refusing to execute a contract with Local 59. The record demonstrates, as the Administrative Law Judge found, that Desco has for many years recognized Local 59 as the exclusive bargaining representative of its employees classified as helpers and has consistently applied to these employees many of the terms of the agreements negotiated by Local 59 and the Capitol District Tile, Marble, Terrazzo and Slate Contractors' Association. The record also demonstrates, however, that Respondent Desco is not a member of this Association and has never directly negotiated or signed a collective-bargaining agreement with Local 59. Thus, Desco's refusal in December 1974 and January 1975 to sign the Association contracts, as requested by Local 59, was not contrary to its practice. In these circumstances, we perceive no factual or legal basis for concluding that Desco's

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[7] Although the complaint does not allege this unilateral action as a separate violation of the Act, we find that it is sufficiently covered by the complaint's other allegation of 8(a)(5) misconduct. Furthermore, the facts surrounding Desco's unilateral actions with respect to the pension and savings funds were fully litigated at the hearing.

427

refusal to sign the contract violated Section 8(a)(5) of the Act. Accordingly, we do not adopt that portion of the Administrative Law Judge's recommended Order which requires Respondent Desco to sign the Local 59 agreement.

Finally, we adopt the Administrative Law Judge's recommended Order requiring that Respondent Desco cease and desist from recognizing and bargaining with Respondent Locals 6 and 16. Nothing in that order shall be construed, however, as requiring Respondent Desco to withdraw, vary, or abandon any benefits which it may have granted to its helpers under its collective-bargaining agreement with Local 6 and 16.[8]

Amended Conclusions of Law

Substitute the following for the Administrative Law Judge's Additional Conclusions of Law 5:

5. By the foregoing conduct which tended to undermine Local 59's status as collective-bargaining representative of Respondent Desco's helpers, by its withdrawal of recognition from Local 59 and its refusal to meet or negotiate with Local 59, and by its unilateral changes in the terms and conditions of employment of its helpers, Respondent Desco has violated Section 8(a)(5) and (1) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondents, Desco Vitro-Glaze of Schenectady, Inc., its officers, agents, successors, and assigns, Local 6 and Local 16, Bricklayers, Masons, Plasterers,

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[8] See e.g., Stayer's Johnsonville Meats, Inc., 174 NLRB 693 (1969).

Marble, Tile and Terrazzo Workers International Union, AFL--CIO, their officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for section A, 1, of the recommended Order:

"A. Respondent Desco, its officers, agents, successors, and assigns, shall:

"1. Cease and desist from:

"(a) Interrogating its employees concerning their union membership; soliciting its employees to withdraw their membership in Local 59, International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers, AFL--CIO, or any other labor organization; soliciting its employees to join Local 6 or 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL--CIO, or any other labor organization; threatening its employees with discharge unless they joined Local 6 or Local 16, or any other labor organization, or otherwise assisting Locals 6, 16, or any other labor organization to secure memberships from its employees.

"(b) Withdrawing recognition from and refusing to recognize and bargain with Local 59 as the exclusive collective-bargaining representative of its employees (hereinafter called helpers) in the following appropriate unit:

> "All marble, stone and slate publishers, rubbers and sawyers, tile and marble setters helpers, and terrazzo workers helpers employed by Respondent Desco at its plant and jobsites within the geographical jurisdiction of Local 59, excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act, and all other employees.

"(c) Unilaterally, without prior notice to or negotiation with Local 59, discontinuing its payments to the pension and savings funds on behalf of its employees in the above-described bargaining unit.

"(d) Recognizing Local 6 or Local 16, as the collective-bargaining representative of its helpers in the bargaining unit described above and extending its contracts with Locals 6 and 16, including the union-security provisions thereof, to its helpers.

"(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act."

2. Substitute the following for paragraph 2(a):

"(a) Withdraw and withhold all recognition from Respondent Locals 6 and 16 as the collective-bargaining representatives of its helpers in the above-described bargaining unit unless and until said labor organizations have been duly certified by the National Labor Relations Board as the exclusive representative of such employees."

3. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs and renumber the subsequent footnote, accordingly.

"(c) Make whole the employees in the above-described bargaining unit who were adversely affected by Respondent's failure to pay for their pension and savings funds, contributions, as provided in the past, by granting them all interest, emoluments, rights, and privileges in the pension and savings funds which would have accrued to them but for Respondent's unlawful conduct, found herein; and, further, henceforth make such pension and savings funds contributions until such time as Respondent negotiates in good faith with the Union either to an agreement or to an impasse.[16/] "

"[16/] See Fullerton Transfer & Storage Limited, Inc., 224 NLRB No. 80 (1976). See also Impressions, Inc., 221 NLRB 389 (1975)."

4. Substitute the attached Appendix A for that of the Administrative Law Judge.

Dated, Washington, D.C. June 23, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Betty Southard Murphy, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT interrogate our employees concerning their union membership.

WE WILL NOT discourage our helpers from membership in Local 59, International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers, AFL--CIO, or any other labor organization, and WE WILL NOT encourage our helpers to join Local 6 or Local 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL--CIO, or any other labor organization, by soliciting them to join another organization, or by threatening them with discharge unless they join Local 6 or Local 16.

WE WILL NOT assist or contribute support to Local 6 or Local 16 by assisting them to organize our helpers or by recognizing either of them as the collective-bargaining representative of our helpers in the bargaining unit described below, unless and until they have been certified as such representative by the National Labor Relations Board.

WE WILL NOT unilaterally, without notice to or negotiation with Local 59, discontinue our contributions to pension and savings funds on behalf of our helpers in the bargaining unit described below.

WE WILL withdraw recognition of Local 6 and Local 16 as the collective bargaining representatives of our helpers in the bargaining unit described below, and WE WILL NOT apply the collective-bargaining agreements between ourselves and Locals 6 and 16 to our helpers. However, we are not required to withdraw, vary, or abandon any term or condition of employment which may have been established or confirmed within said collective-bargaining agreements. The workers covered thereby will not be prejudiced with respect to their assertion of rights derived from said collective-bargaining agreements.

WE WILL recognize and bargain with Local 59 as the exclusive collective-bargaining representative of our helpers in the bargaining unit described below and, upon request, WE WILL execute a signed agreement embodying any contract negotiated between Local 59 and ourselves.

WE WILL offer all unreinstated unfair labor practice strikers immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging if necessary any replacements, and WE WILL make them whole for any earnings lost as a result of our refusal to reinstate them, plus interest at 6 percent per annum.

WE WILL make whole our helpers in the bargaining unit described below who were adversely affected by our failure to pay for their pension and savings funds contributions, as provided in the past, by granting them all interest, emoluments, rights, and privileges in their pension and savings funds which would have accrued to them but for our unlawful conduct and, further, WE WILL henceforth make such pension and savings funds contributions payments until such time as we negotiate in good faith with the Union either to an agreement or to an impasse.

WE WILL, jointly and severally with Local 6 and Local 16, make our helpers whole for all initiation fees, dues, and other moneys paid or checked off pursuant to our contracts with those Unions, with 6 percent per annum interest.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

The appropriate bargaining unit in question is:

> All marble, stone and slate publishers, rubbers and sawyers, tile and marble setters helpers, and terrazzo workers helpers employed by Respondent Desco at its plant and job sites within the geographical jurisdiction of Local 59, excluding all office clerical employees, all professional employees, and all guards and supervisors as defined in the Act, and all other employees.

DESCO VITRO-GLAZE OF SCHENECTADY, INC.
(Employer)

Dated ____________________ By ______________________________
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Ninth Floor, Federal Building, 111 West Huron reet, Buffalo, New York 14202, Telephone 518--472--3119.

JD-483-75
Albany, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

DESCO VITRO-GLAZE OF SCHENECTADY, INC.

and — Case No. 3-CA-5993

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and — Case No. 3-CB-2498-1

LOCAL 59, INTERNATIONAL ASSOCIATION
OF MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and — Case No. 3-CB-2498-2

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

Thomas J. Sheridan, Esq., and
Paul V. Mulkern, Jr., Esq.,
for the General Counsel, N.L.R.B.
Daniel J. Smitas, Esq., of
Albany, N.Y., for Respondent
Desco.
Dominick Tocci, Esq., of Albany,
N.Y., for Respondents Local 6
and Local 16.

DECISION

Statement of the Case

JAMES V. CONSTANTINE, Trial Examiner: This is a consolidated case consisting of three unfair labor practice cases, and litigated pursuant to the provisions of Section 10(b) of the National Labor Relations Act, herein called the Act. 29 U.S.C. 160 (b). The Charging Party in each case is Local 59 of the Marble Workers International, herein called Local 59. In Case No. 3-CA-5993, Local 59 filed a charge on March 4 and an amended charge on April 14, 1975, against Respondent Desco, an employer. In Case No. 3-CB-2498-1 Local 59 filed a charge on March 4 and an amended charge on April 14, 1975, against Local 6 of the Bricklayers International Union, herein called Local 6. In Case No. 3-CB-2498-2 Local 59 filed a charge on March 4 and an amended charge on April 14, 1975, against Local 16 of said Bricklayers, herein caled Local 16. A consolidated complaint was issued on the above charges on April 18, 1975, by the Regional Director of the Third Region of the National Labor Relations Board (Buffalo, New York), herein called the Board, on behalf of the General Counsel of the Board.

Said complaint alleges that Desco engaged in conduct violating Section 8(a)(1), (2), (3), and (5), and that Local 6 and 16 violated Section 8(b)(1)(A) and (2), and that such conduct affects commerce within the meaning of Section 2(6) and (7), of the Act. Each Respondent has answered admitting some of the allegations of the complaint but denying that it committed any unfair labor practices.

Pursuant to due notice this case came on to be heard, and was tried, at Albany, New York, on June 11 and 12, 1975. All parties other than Local 59 were represented at and participated in the trial and had full opportunity to introduce evidence, examine and cross-examine witnesses, file briefs, and argue orally. A brief has been received from the General Counsel and a joint letter submitted by Local 6 and Local 16 briefly stating that the General Counsel failed to prove that they violated Section 8(b)(1)(A) and (2) of the Act.

In the absence of objection thereto, the General Counsel's Motion to Correct Transcript is granted.

Upon the entire record in this case, and from my observation of the demeanor of the witnesses, I make the following:

Findings of Fact

I. As to Jurisdiction

Respondent Desco, a New York corporation, is engaged at Schenectady and Albany, New York, as a construction contractor in the application of special floorings, decks, and coatings. During the year preceding the issuance of the consolidated complaint said Respondent purchased goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported directly to it in New York State directly from other States. I find that Desco is an employer within the meaning of Section 2(2), and is engaged in commerce within the meaning of Section 2(6) and (7), of the Act.

II. The Labor Organization Involved

Local 6, Local 16, and Local 59 each is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. General Counsel's Evidence

Charles Johnson testified substantially as follows for the General Counsel. From the middle 50's to December 31, 1971, he was a business agent for Local 59. Members of Local 59 mix "all materials," grinding all materials as "helpers" for employers in an employers' association called Contractors Association, working "with a mechanic, an assistant mechanic at all times." Said mechanics are represented by Local 6 and 16. About 25 to 30 years ago Desco recognized Local 59 as the bargaining representative of the foregoing helpers, and Desco hired such helpers by calling the office of Local 59.

Local 59 negotiates a contract with said Contractors Association. Desco never belonged to said association but it signed "a letter of intent" agreeing to pay Desco's helpers the wages set forth in the Association's contract with Local 59. See G.C. Ex. 2. Desco signed such a letter "every time there was a new contract negotiated" by Local 59 with said association. In addition, Desco "abided by all the rules and regulations" of said association's contract. For the association's 1970-1973 contract see G.C. Ex. 3.

Joseph T. Le Pore, Desco's president until January 1973, was called as a witness by the General Counsel. His testimony may be summarized as follows. He was assoicated with Desco for 20 to 21 years. During that period Desco recognized Local 59 as the bargaining agent of Desco's helpers. Such helpers' unit mixed, ground, polished and sealed flooring materials. Le Pore does not recall signing a letter of intent, such as G.C. Ex. 2; but Desco, as a member of the Eastern New York Contractors Association, was informed by said association's contract what wages should be paid to "union men" in Local 59. Said contract specifically covered Locals 6 and 16. But Desco never signed any contract with Local 59.

Constantine Psarras, another witness for the General Counsel, in substance gave the following testimony. He began working for Desco on October 20, 1974, as a helper on the South Mall. His work included grinding, washing, and mixing in "preparing the material for the mechanics." Said mechanics who "work with the trowel," are represented by Local 6. Soon he joined Local 59. Employee Satiriou also joined Local 59. Both Psarras and Satiriou were paid "in accordance with the Local 59 contract."

On January 24, 1975, King, a supervisor of Desco, asked Satiriou, in the presence of Psarras, if Satiriou "joined the Union," i.e., Local 59. When Satiriou replied that he had, King commented, "He's not supposed to because they being forced to do that." Satiriou denied "being forced." Then King asked Satiriou if the latter gave "any money," and the answer was, "Yes, I give $100."

On January 29, 1975, King told Psarras, "the outfit, after the problems that they had with the Unions, was gonna change and they ain't gonna use any more 59 helpers." King added that if Psarras joined the "masons union," Psarras is "gonna become a mechanic . . . or something like this."

On January 31, 1975, Segatto, accompanied by employees Psarras, Satiriou, and Evangelidis went to the office of Desco's president, Cordi, at the jobsite. Vince Riggi, a business agent of Local 16, was also present. Riggi asked Psarras, "how much you gonna give me?" So Psarras paid Riggi $50 which he borrowed from Cordi because Riggi was unable to cash the $180 paycheck of Psarras. Then Riggi gave Psarras a receipt for paying "on account" the initiation fee of Local 16. See G.C. Ex. 4. Then Satiriou also borrowed $50 from Cordi and paid this to Riggi for a receipt similar to that of Psarras. However, Evangelidis paid some money to Riggi without borrowing from Cordi.

About February 7, 1975, the foregoing persons and also Superintendent King and Dominick Marotta were present in Cordi's office at the jobsite. Psarras said to Riggi, "I don't have the money, I'm going to have it a little later on . . . [in] about 2 or 3 weeks." At the same time Marotta was "filling out . . . these applications [for] the new union to go to."

About February 27 Psarras had a conversation with President Cordi of Desco at work. Handing Psarras a paycheck Cordi asked if the former had paid "the rest of the money for the new union." Psarras replied that Riggi "don't accept the money . . . till the time they find out exactly what is going on with the Union." But Cordi insisted that the money was refused because only $20, instead of "their whole initiation fee," was offered; and, he added, "So you better pay this money or you don't gonna stay long on the job if you don't join that union." Cordi made substantially the same comment to employee Evangelidis who was also present. Cordi also mentioned that Riggi would come by the next day "to take the rest of the money." But Riggi did not show up the following day.

Before paying money to Riggi, Psarras had some of his wages deducted for savings and mailed to the Fidelity Bank "for [Local] 59." But after he "paid . . . money to Riggi" stamps were given to Psarras "for the new Local 16, the Masons." But the duties or work of Psarras never changed after he paid money to Riggi.

On cross Psarras stated he paid only $50 on account of the Local 16 of the Masons Union initiation fee, never became a member of the Masons Union, and never paid it any dues. Nor was he ever sworn in as a member of said union. And he received no letters from said Local 16 reguesting him "to pay any money to them." He also stated he did not "fill out an application fee for Mr. Riggi." Further, on cross, he asserted he "helped lay burlap down . . . did help wash down the floor . . . used a squeege," but never used a trowel. In fact he "was never allowed" to use a trowel. He also "prepared the surface for the material" to be "put on" by grinding off the paint, and also ground "the finisher's coat." However, he also stated that the mechanics, who were members of the Masons Union, sometimes ground, polished, and "washed down" on the job.

Desco's president, Joseph Cordi, was used as a witness by the General Counsel. An adequate summary of his testimony is here set forth. When he assumed such position in January, 1973, Cordi "was aware" that Local 59 "was the collective bargaining representative for the Tile, Marble, and Terrazzo Workers Helpers." From then until January, 1975, Desco "utilized" the "wage rate schedule" in the contract "between Local 59 and the Employers' Association." Cordi has a copy of such contract. Desco also "made contributions to the Local 59 Savings Deposit Plan" and Pension Fund. See G.C. Ex. 5, 6, 7, 8, 9, and 11 for such contributions for Desco's employees classified as helpers.

Cordi further testified that Desco paid "certain employees the wage rates that appear in "a contract between "Local 59 and the Employer Association" effective for the period June 1, 1973, to August 31, 1976. See G.C. Ex. 12. However, Desco has a contract with Locals 6, 10, and 16 (See G.C. Ex. 14 and Tr. p. 164) and has "paid the wage rates that appear in that contract." Pursuant to this contract, referred to as the "Bricklayers Contract," employees Hamilton, Morotta, Mohamad, Segatto, and Coppolo "had their wages raised to $8.73 per hour, in February of '75."

David Lavenberg, the business agent of Local 59 since January 24, 1972, testified for the General Counsel substantially as follows. At Desco members of Local 59 "do the loading, unloading, distribution of material, mixing grinding, polishing, waxing, servicing the Terrazzo mechanic with the materials that he uses in the application of the work." Such Terrazzo mechanics are represented by Local 6 in Albany and Local 16 in Schenectady, New York. Local 59 has a collective-bargaining contract in this area with Capital District Tile, Marble, and Terrazzo Slate Contractors Association. See G.C. Ex. 12. Article I of said contract describes "the bargaining unit."

But Desco is not a member of the Employer Association which is a party to G.C. Ex. 12, and "Local 59 does not have a bargaining relationship with Desco." See Tr. p. 182. However, such bargaining relationship existed "at one time." And when he became business agent for Local 59 Desco employed "Tile, Marble, and Terrazzo Workers Helpers," and the 1970-1973 contract "between Local 59 and the Association was in effect." Then said "Helpers" of Desco "came under this new contract" for 1973-1976 between Local 59 and "the Association." Such "helpers" who were employed by Desco during Lavenberg's "term of office" were all members of Local 59. Generally there were five persons employed by Desco as such helpers.

According to Lavenberg, Desco "recognized" Local 59 "as the collective-bargaining representative of [its] Tile, Marble, and Terrazzo Workers helpers." And in November, 1973, "men from [Desco's] bargaining unit . . . working . . . at Skidmore College . . . were not receiving the travel expenses prescribed in the agreement." As a result Lavenberg "called a meeting with the arbitration committee." Also Desco paid money into the Local 59 Savings Fund as set forth in G.C. Ex. 9 and the Local 59 Pension Fund described in G.C. Ex. 11. Such contracts were between the Association (of which Desco was not a member) and Local 59.

On December 12, 1974, Lavenberg wrote to Desco enclosing agreements and requesting the latter to sign "our working agreement . . . since fringe benefits are being deducted from the men's wages." See G.C. Ex. 18. But President Cordi of Desco did not sign such an agreement.

On Sunday, January 26, 1975, President Cordi of Desco telephoned Lavenberg that the latter "did a sneaky thing by going on the job the previous Friday and signing up two men when they didn't want to sign an application to Local 59, and that [Lavenberg] had coerced them and forced them to do it." Lavenberg answered that he "did not force anybody to make any applications for membership." Then Cordi accused him of coercing them and "threatened them with their jobs if they did not make an application to the Local Union." But Lavenberg insisted in this call "that that was not true."

The next day, January 27, Lavenberg went to the jobsite. He asked employee Hamilton, in the presence of Cordi and Superintendent King, whether he, Lavenberg, had coerced or threatened Hamilton "in any way if he [Hamilton] did not sign an application in Local 59." At the same time Lavenberg returned a check to Hamilton, i.e., the $100 initiation fee which Hamilton had given him the previous Friday. Soon thereafter, at another location at said jobsite, Lavenberg asked employee Satiriou, in the presence of Cordi, King, and Hamilton, the same question he had just asked Hamilton. Then Cordi asked Satiriou, "Are you going with him [Lavenberg], or are you going to stay here with me?" This caused Lavenberg to complain to Cordi, "You're putting the man on the spot . . . rather than do this I'll return the check that he [Satiriou] gave me in that amount of $100 as an initiation fee on the previous Friday." And the check was thereupon returned. It is G.C. Ex. 20.

Between January 27 and 30, 1975, Lavenberg at the jobsite requested Cordi "about signing a contract" with Local 59. Cordi answered, "Definitely not."

On or about February 18, 1975, accompanied by International Representative Gerald Bombassaro, Lavenberg went to the jobsite. While there Bombassaro asked Cordi whether the latter would sign a bargaining agreement with Local 59. Cordi responded, "Definitely not." Cordi added that he was changing his method of operation "and . . . there was a Chemical Union and he would no longer have any need for members of Local 59." Then Bombassaro asked Cordi whether the fact that "the men did not make any application in [Local] 6 or 16, whether that would affect their employment." But Cordi merely said, "It would be hard to say." At this point Cordi "called over" three employees and asked them, "Haven't we been one big, happy family? Haven't I treated you people good? What has this individual [Lavenberg] and Local 59 ever done for you?"

"Around February of '75'" some of the Local 59 members employed by Desco "had their pay rates changed," but Desco did not bargain with Local 59 about these changes. About March 21, 1975, Local 59 established a picket line on the jobsite, i.e., "on the Empire State Plaza," and also at the Hospital at Glen Falls, New York, against Desco, Local 6, and Local 16, the purpose of which "was the unfair labor practice by the Respondent." Such picketing continued for 2 weeks. Local 59 has been on strike against Desco since said March 31.

On cross Lavenberg admitted that Local 59 never had a collective-bargaining contract with Desco comprehending its helpers, but did have one signed "letter of intent" from Desco. He could not locate any other signed letters of intent by Desco. Further, on cross, he asserted that, although search was made therefor, he could find no letter from Desco stating that it recognized Local 59 as the collective-bargaining agent for any of Desco's employees. And since 1967 Local 59 has negotiated three bargaining agreements with "the Employers Association." But he "presumed that [Local 59] had a signed agreement" with Desco.

Also, on cross, Lavenberg claimed that the Local 59 unit at Desco comprises "all the servicing of the mechanics, the loading and unloading, the mixing, the grinding, washing, polishing, waxing, etcetera . . . the marble chips or . . . natural . . . stone or anything that's used in the process of a floor."

Gerald Bombassaro is an International Representative of the International with which Local 59 is affiliated. A conspectus of his testimony follows. Article II of said International's Constitution and Bylaws describes the jurisdiction of its members. See pp. 9-11 of G.C. Ex. 23.

About February 12, 1975, he telephoned President Cordi of Desco about "the problem . . . that Local 59 did not have a collective bargaining [Sic] with Desco" and asked to speak to him about it. Cordi agreed to discuss it whenever Bombassaro happened to be in Albany but added that "he [Cordi] had decided that he was going to go to what is known as . . . the Chemical Products Workers and that he felt that there would be no need for him [Cordi] to sign a collective-bargaining agreement with Local 59."

So on February 18 the two met at the jobsite and, with Lavenberg, talked about the said problem. (Their conversation was recited by Lavenberg and may be found in the summary of his testimony, supra. It will not be repeated here .) Continuing, Cordi complained that Lavenberg "had been harassing him [Cordi] over the last year . . . on different jobs . . . and he [Cordi] felt that he had had enough harassment from Local 59 and he [Cordi] felt that under the present agreement he had signed between the bricklayers and the painters that he no longer had to tolerate this type of harassment. And for that reason he [Cordi] would not even consider signing a Local 59 agreement." On the same evening Bombassaro telephoned Cordi and requested the latter to reconsider signing "a Local 59 agreement . . . [as] I felt [the work involved] belonged to our people." But Cordi refused to change his position.

Still another witness for the General Counsel was Demetrius Evangelidis, whose nickname is Mike. An adequate abridgment of his testimony follows. He started working for Desco "sometime after January, 1975." Towards the end of January President Cordi of Desco, accompanied by President Riggi of Local 16, spoke to Mike in Desco's office at the jobsite. Employee Psarras was also present. Cordi and Riggi "told" Mike to join Local 16. So Mike "gave $100 deposit" to Riggi and received a receipt therefor from Riggi. Employee Psarras "didn't have any money and he got it from Joe Cordi, $50." Soon employee Satiriou came to the office while Mike was still there. Since Satiriou "didn't have any money, too, . . . he borrowed $50 . . . from Joe Cordi . . . to give to Riggi."

When Mike started to work his pay was $7.98 an hour. However, following his paying Riggi $100, Mike received "Mason Stamps." The value of such stamps was deducted from his pay. Also, following said $100 payment subtractions were made from Mike's pay for his pension, and such withdrawals were paid to Local 16. About a week later Riggi, at the jobsite, asked Mike for "the rest of the money." Mike replied that he would "give a little bit" at a time "so they'll have it."

Roughly a couple weeks later Cordi on payday told Psarras in the presence of Mike "to pay the rest of the money to Local 16," and, if Psarras "did not pay the money, he was going to be out of a job." Then Cordi handed Mike the latter's paycheck and said, "You guys are not going to play games. You'd better pay to Local 16, because otherwise you're going to be out of a job." although Mike stated he could pay only "little by little" because he had "expenses and this and that," Cordi responded, "You'd better pay your money to the Union. Because otherwise you're going to be out of a job." So Mike said "O.K. I'm going to pay" and "gave him the money." Finally, on direct Mike claimed he had joined the strike of Local 59 against Desco.

on cross, Mike first stated that he was never a member of Local 59 but later testified that he joined said union "sometime the middle of February, '75.'" Then he testified that he had no membership card but only an "application." Finally, it was stipulated that he was not a member of Local 59. The meeting with Cordi and Riggi at the jobsite occurred in early February before he "applied" to Local 59. On this occasion Riggi merely said to Mike "How much money have you got to put down for a deposit?" And Mike replied, "Okay, I've got $100 and I'm going to put it down for a deposit." Although Mike "paid $100 down" he later "took it back."

Some time later Riggi again came to the jobsite, according to Mike's cross-examination. This time Riggi said to Mike, "Give the rest of the money." However, Mike never paid any dues to Local 16 while he worked for Desco. Also, on cross, Mike testified he offered Riggi $20 on account of Mike's initiation fee but Riggi did not take it.

Ali Mohamad, Jr., another witness for the General Counsel, testified substantially as follows. He worked for Desco as a helper and is a member of Local 59. As a helper his duties include grinding terrazzo, standing, using the small buffers, "handling the material, distributing," loading and unloading trucks. Sometimes, but "not too often," he performed mechanic's work for Desco.

Up to January or February, 1975, his helper's pay was $8,38 an hour and "money paid to the Fidelity Bank as a savings, money paid to the pension plan at the Temple in Albany" by Desco for "helpers of Local 59." About January 29, 1975, he had a conversation with Superintendent King of Desco. King asked Mohamad if the latter wanted to become a mason "soon," and that "Aldo would be on the job tomorrow and then I [Mohamad] could sign up." Continuing, King added that Mohamad as a mason would be doing "the same as you've been doing."

About January 30 King told Mohamad that Aldo was at the jobsite, and the former two went to the office there where they met Aldo Malossi of Local 6 and President Cordi of Desco. Mohamed told Cordi that the former "will not start at the bottom as an apprentice . . . . I would . . . want to go in as a top man." Since Cordi assured him that Mohamad "would be top man," the latter "gave Aldo a check" and Aldo gave him a recipt. See G.C. Ex. 24 for said receipt. But on or about February 12 Mohamad went to the Local 6 office "to get my money back." However, "there was no decision that [Mohamad] would get [his] money back." And after he "joined" Local 6 Mohamed's duties at Desco did not change "in any way."

After making the above-mentioned payment to Malossi the pay of Mohamad was raised from $8.73 an hour plus "stamps . . . the stamps . . . it's like a savings." Local 6 gave him said stamps. Mohamad also, following the above payment, was placed in the Local 6 pension plan, whereas prior to that he had been in the Local 59 pension plan.

About mid-February, 1975, Mohamad heard a conversation between Bombassaro and Cordi. It has been set out elsewhere herein and need not be repeated here. In this conversation Cordi said, "it was hard to say" whether Mohamad would be laid off or fired if the latter did not join Local 6. And on March 31, 1975, according to Mohamad, "Local 59 went on strike against us." Mohamad picketed during said strike. Two or three weeks after said March 31 Mohamad went back to work for Desco. When he returned he observed that employees Segatto, Satiriou, and Hamilton were working for Desco as helpers.

It was stipulated that "prior to the money given to Mr. Malossi and Mr. Riggi, the employees that we're discussing here were covered only by the welfare and the pension of that plan."

On cross, Mohamad admitted that he sometimes did the work of mechanics at Desco and that such mechanics were members of Local 6 and Local 16, but he added that he did so only because he "would make that as my own decision" and not because Desco ordered him to do so. And he admitted on cross that he wanted to join the mechanic's Mason Union, i.e., Local 6, but "didn't want to start at the bottom. At a lower rate." Further, on cross, he stated that he did not sign an application on January 30, 1975, to join Local 6, but he did sign one at a Local 6 meeting on February 7; that he never paid dues to Local 6; and that his $133 initiation fee paid to Local 6 was returned to him when he so requested. Finally, on cross he stated there were six or seven employees in Desco's doing "helpers work" and that he was "never forced" by Desco into joining the "Mason's Union."

John Satiriou also testified for the General Counsel. His testimony may be adequately condensed as follows. He started working as a helper for Desco in the second week of January 1975, at the helpers' rate of $8.32 an hour, less 75 cents an hour for 6 months for being a beginner. On Friday, January 24, 1975, Satiriou told Superintendent King "I had signed . . . I put in an application with Local 59 and . . . I gave them $100 for the initiation fee. And [King] told me that I didn't have to really do that . . . it could wait because you need the money." President Cordi, in the presence of King, asked Satiriou if Satiriou had "paid them." Satiriou said he had and inquired if he had done "something wrong." Cordi replied, "No." Later that same day Satiriou had a conversation with Lavenberg, King, and Cordi. Cordi asked Satiriou if the latter "wanted his money back." Satiriou replied that he did. So Cordi instructed Lavenberg to "give it back," and Lavenberg did so.

Then on about January 29, King informed Satiriou that Riggi was coming to the jobsite and that Satiriou "join Local 59." On January 31 Satiriou had a conversation with Cordi and Riggi. Riggi asked Satiriou, "Do you have any money for an application?" Since Satiriou had not yet cashed his paycheck Cordi loaned him $50 for a "down payment for the initiation." Riggi gave Satiriou a receipt for said sum. (Said receipt is G.C. Ex. 25.)

Then on Friday, February 7, Riggi asked Satiriou in the presence of Cordi if Satiriou "had the rest of the money." When Satiriou replied that he "can't afford it this week," Riggi "made arrangements" for Satiriou to pay "after the Monday that was coming." Riggi made a similar arrangement with Mike Evangelidis who was present but "couldn't afford" to pay at the time.

On the agreed-upon Monday, Satiriou and Mike "went to the office" and each told Riggi that each could afford" only $20. But Riggi rejected such sum because "there's some kind of trouble," and told them to "wait and see when we get it straightened out."

On cross, Satiriou testified that Riggi asked him if he, Satiriou, "wanted to join Local 16," and Satiriou answered, "Yeah. Okay." Satiriou added he did so on his own and "Nobody really stuck a knife in my throat." Further, although he gave Riggi a $50 down payment, Satiriou has not paid anything further on his initiation fee. Nor has he paid any dues to Local 16. Further, Satiriou's hourly rate "went up" around 30 cents after he gave said $50 to Riggi. Further, on cross, Satiriou testified that he used a trowel "a couple of times . . . . But to be truthful, I don't know how to use the trowel." Finally, on cross Satiriou admitted that Desco did not "threaten [him] or coerce [him] in any manner in to joining either Local 6 or 16."

Frank Glogowski also testified as a witness for the General Counsel. A compendium of his testimony follows. He is president of Local 59. In November, 1973, President Cordi of Desco told him that Cordi "would eliminate helpers and hire men off the street if need be, to perform the duties of his [Cordi's] business." I find no violation of the Act in this assertion by Cordi.

At this point the General Counsel rested.

B. Desco's Defense

Joseph Cordi, Desco's president since January, 1973, was its first witness. He testified substantially as follows. He entered the employment of Desco in 1972, "to become a partner," and later was made its president. Desco belongs to the Northeast Subcontractors Association, "better known as NESCA," to the Painting and Decorating Contractors of America, known as PDCA, to the Eastern New York Construction Employers Association (ENYCEA), and to the National Association of Decorative and Architectural Finishes, known as NADAF, and to DESCO, International. As a member of ENYCEA Desco is bound by contracts negotiated by the former with Local 6, 10, and 16. But Desco is not a member of Capital District Tile, Marble, Terrazo,and State Contractors Association.

Desco is in the business of special coatings, special floors and ducts, painting, and decorating. It employs approximately 50 persons as painters and terrazzo workers, but does not classify any of its employees as helpers. All of said employees are covered by a collective-bargaining agreement. One employee is classified as "marble, stone, slate polishing . . . and terrazzo workers' helpers." It is Ali Mohamad, is a member of Local 59. Approximately 30 employees are "members of either Local 6 of 16 of the Mason's Union." These 30 work on "special floors and decks and on occasional special coatings." Desco "handles about 85 different variations" of specialty coating floors and decks "from" one company and "about 50 variations from" another company. Cordi further claimed DESCO had no work of the kind Local 59 claims.

In November, 1974, Cordi met with Aldo Malossi, a representative of Local 6. Mellosi "claimed the work we wer[illegible] doing on the Swan Street building, which was our auto-dex system."

In January, 1975, Cordi, in the presence of Mellosi and Desco's Superintendent King, spoke to employees Seggato Mohamad, and Hamilton. Cordi "asked those people if they wanted to enroll . . . in Local 6. And if they did so, they would be doing so of their own free will and on their own accord . . . and they said yes." Mohamad conditioned his willingness to join Local 6 on being "paid journeyman's wages, etc., and so on . . . ." Cordi told him "definitely, he [Mohamad] would." Then Mohamad and Hamilton made an application to become members of Local 6. "We advised" Sagotta to join the Schenectady local as he lived there but Cordi denies he loaned any employee at this time "any money for any reason."

Sometime in late January, 1975, Cordi met with Riggi at the latter's request. Employees Seggato Marodda, Capolla, Psarras, Sattaru, and Evangelides, as well as Desco's Superintendent King, were present. Cordi testified that, on this occasion, "we had informed the employees . . . that they would have an opportunity of their own free will and volition to join the Local 16 Masons Union . . . and this was an opportunity to do so . . . . In general, they were all in favor of doing so. Without reservations . . . . In essence, they welcomed the opportunity to join the Mason's Union." But at no time did Cordi "make reference to their membership, if they had membership, to Local 59 of the Helpers Union." Nor did he threaten any of them; and he told them "this was something that they had to do of their own free will and on their own accord . . . . And there would be no repercussions in any way, shape, or form, no matter which way they decided."

During the meeting employee Psarras sought to borrow $50 from Cordi. "This is a normal practice with me. Our employees continuously borrow money from me and [so] I loaned him $50." Cordi also loaned $50 to employee Satiriou on this occasion to enable the latter "to join up in the Union." And employees Marodda and Satiriou mentioned that they "welcomed the elevation" in joining Local 6 or 16 and "did sort of relate . . . that they felt that possibly there was no future for them in Local 59," according to Cordi.

Later Cordi asked employees John Satiriou and Demetriou Evangelides "what their standing was . . . if they were in good standing with the unions . . . . And they told me they were not. That they had not paid up and so on and so forth." So he stated to them "it was always a good idea to keep the record clean and stay in good standings." But he did not say to them that they had to belong to a union because, he testified, "I could care less if they belonged to a union or not."

About February 18 Jerry Bombassaro, an international representative of the Helpers Union, spoke to Cordi at one of Desco's jobs. The former asked why certain employees of Desco "who had been in Local 59 [and] that had been doing this work for a period of time now had to go into another union." Cordi answered, "Definitely they did not have to go into another union in any way, shape, or form." Bombassaro also wanted to know why Desco did not "utilize" helpers. Cordi gave him a long explanation, which need not be repeated here, but in general he said that the nature of Desco's work had so changed that "basically [they] were not doing helpers' work in any way, shape, or form. Most of these people were trained . . . applicators and personnel to handle these special operations and techniques and technologies."

Continuing, Cordi told Bombassaro that Desco, as a member of NAADAF, "had an agreement with this organization which we . . . would live by and to employ his [Bombassaro's] people would be in violation of this agreement." Whem Bombassaro pointed out to Cordi that there were other contractors in the area performing similar work to Desco's but employing "helpers," Cordi elucidated that "these contractors were basically ceramic tile and terrazzo and marble contractors that normally employed . . . helpers and that the amount of work they did in our line was very minimal." When Bombassaro inquired if it made any difference to Cordi "what union these people belonged to," the latter responded that it did not matter to him but that Desco intended "to live by" its agreement with NADAF.

Cordi further testified that Desco never recognized Local 59 as the collective-bargaining representative of any of its employees, and that Desco never withdrew "recognition from Local 59 as a collective-barganing representative" of any of its employees; and Cordi denies that on or about January 27, 1975, or any other time, he solicited Desco's employees at the jobsite to withdraw their membership in Local 59 or threaten them with discharge unless they joined Local 16.

On cross Cordi asserted that the so called "helpers" were "promoted to mechanics, some to improvers," and this resulted in their receiving more pay per hour. Such promotions occurred at the same time as the meetings with Malossi and Riggi. On cross Cordi also testified that employees on the job were informed by Desco supervisor King that Malossi and Riggi "would be there" and that employees, "if they wanted to," could go to hear what these two persons had to say. The meeting of employees with Malossi and that with Riggi each lasted 10 or 15 minutes at "about noontime."

C. Concluding Findings and Discussion

1. As to Respondent Employer

Initially, I find the unit described in paragraph 10 of the complaint to be an appropriate unit within the import of Section 9(a) of the Act. And I find that for some time prior to December 12, 1974, Respondent recognized and bargained with Local 59 as the collective-bargaining representative of said employees. However, I find that Respondent lawfully refused to recognize and bargain with said Local 59 since on or about said December 12 because I further find that Local 59 lost its majority in said unit without any unlawful conduct contributing to said loss by Respondent, or Local 6, or Local 16.

It is true, and I find, that Cordi, Respondent's president, did ask employees on more than one occasion whether they desired "to enroll" in Local 6 or Local 16. In fact he so testified. But crediting him, and not crediting the General Counsel's evidence inconsistent therewith, I find that he also expressly informed such employees that if they desired to so enroll, "they would be doing so of their free will and on their own accord." And further find that at no time did he force or coerce any of them to join said Local 6 or Local 16, and that he never intimated there would be "repercussions in any way, shape, or form, no matter which way they decided," or that he threatened to discharge employees unless they joined Local 6 or 16.

Cordi does not deny, and I find, that he loaned money to some employees to aid them in making a down payment on their initiation fees to Local 6 or Local 16, but I also find that he did so only after they requested such a loan from him. And I also find, crediting Cordi, that employees in the past often borrowed money from him. Under such circumstances I find that his said loans to aid in paying part of the said initiation fees does not constitute a violation of Section 8(a)(1) or (2) of the Act.

Nor do I find that Cordi's allowing representatives of Local 6 and Local 16 to solicit membership among Desco's employees at the jobsite transgresses Section 8(a)(1) or (2) of the Act. Since Cordi made it clear to such employees that they were free to join or not to join Local 6 or Local 16, I find that he did not, merely by allowing such representatives to visit the jobsite, contravene Section 8(a)(1) or (2) of the Act.

Further, I find that Local 59 lost its majority without any unfair labor practices being committed by Desco or, as found below, by Local 6 or Local 16. Hence I find that such loss of majority cannot be attributed to Desco or Local 6 or 16. And I also find that Local 6 and Local 16 obtained a valid majority in the unit in question, i.e., the Local 59 unit, without any illegal conduct by Local 6, 16, or Desco, so that Desco lawfully recognized and bargained with said Local 6 and 16 as to said unit after Desco lawfully withdrew recognition from Local 59 as to said unit.

Certain allegations of the complaint allege that Desco violated Section 8(a)(1) of the Act. They are discussed at this point. I find that on or about January 24, 1975, King, a supervisor of Desco asked, employee Psarras if the latter joined Local 59. King also asked employee Satiriou if the latter gave any money to Local 59, and added that employees were being forced to join said Local 59. I find nothing coercive in King's said statement and questions.

On or about February 27 President Cordi asked employee Psarras if the latter had paid "the rest of the money for the new union." Cordi also said, "So you better pay this money or you don't stay on the job if you don't join that union," that is, Local 6 or 16. I find this is not a threat to discharge but, rather, a warning that failure to belong to such union pursuant to a valid union security clause in the contract could cause Psarras to lose his job. Cordi made substantially the same statement to employee Evangelidis. For the same reason I find no violation of the Act in this latter statement.

On or about January 27, 1975, President Cordi asked employee Satiriou whether the latter was "going with" business agent Lavenberg of Local 59 "or are you going to stay here with me?" I find nothing coercive in said inquiry, so that I further find it does not violate Section 8(a)(1) of the Act. And on or about February 18, 1975, Cordi asked three employees in the presence of Lavenberg, "Haven't I treated you good? What has this individual [Lavenberg] and Local 59 ever done for you?" While I find that such questioning indicates animus towards Local 59 I further find that, not being coercive or a promise of benefit, it is protected by Section 8(c) of the Act.

On or about January 29, 1975, Desco's Superintendent King asked employee Mohamad if the latter wanted to become a mason soon and that Aldo, who would be at the jobsite the next day, could sign up Mohamad. The next day Mohamad met Aldo, of Local 6, in the presence of King and President Cordi of Desco. When Mohamad informed Cordi that the former wanted a mason's job as "top man" and not as an apprentice "at the bottom," Cordi assented to this. As a result Mohamad gave Aldo $133 as an invitation fee and was given a receipt therefor. See G.C. Exh. 24 for such receipt. I find no coercion was used on Mohamad by either Aldo or Cordi to join Local 6, and that no unlawful assistance was given by Desco to Local 6 on this occasion. On the question of coercion I credit Mohamad, and therefore find, that he wanted to join Local 6, that he was "never forced" to join Local 6, and that his $133 initiation fee was returned to him when he requested it. Consequently, I have no difficulty in finding as I have above in this paragraph.

On or about January 24, 1975, employee Satiriou told Desco's Superintendent King that the former had applied for membership in Local 59. King replied, "You didn't have to really do that . . . it could wait because you need the money." I find that King's comment does not contravene the Act. Then Cordi asked Satiriou if Satiriou had paid "them." This too, I find, does not exceed the permissible limits of Section 8(c) of the Act. Later that day Cordi asked Satirou if the latter "wanted his money back." When Satiriou replied that he did Cordi instructed Laven of Local 59, who was present, to refund said money to Satirou, and Lavenburg did so. I find Cordi's said conduct did not contravene the Act.

In finding that Satiriou was not coerced to join Local 16 I credit his testimony that he wanted to join said union, that he did so on his own, that "Nobody really stuck a knife in my throat," that although he gave Riggi a $50 down payment on the initiation fee he has not paid anything further on said fee, that he has not paid any dues to Local 16, and that Desco did not "threaten [him] or coerce [him] in any manner into joining either Local 6 or 16."

Also, I find that extending the contract and the union-security clause in the contract therein between Desco and Local 6 and 16, as described in paragraph 8(h) and (i) in the complaint, i.e., to the former Local 59 unit, was lawful. This follows from the following two findings, which I hereby make:

(a) Extending said contract to cover the employees in the unit set forth in paragraph 10 of the complaint, i.e., the former Local 59 unit, was proper since I have found elsewhere herein that Local 59 lost its majority in said unit without any illegal conduct by Desco or Local 6, or Local 16, contributing to said loss.

(b) Local 6 and Local 16 lawfully acquired an uncoerced majority in said unit without any illegal action by them or Desco, as found elsewhere herein. In any event, such majority need not be established once Local 59 lost its majority, for Section 8(f) of the Act expressly provides that "It shall not be an unfair labor practice under subsections (a) and (b) of this section . . . to make an agreement covering employees . . . because (1) the majority status of such labor organization has not been established under the provisions of Section 9 of this Act prior to the making of such agreement . . . ."

Further, I find that Desco had a right, on or about January 30, 1975, to change existing wage rates and other terms and conditions of employment of the employees in the unit set forth in paragraph 10 of the complaint, without notifying Local 59 thereof or bargaining with Local 59 thereon. This is because, as found elsewhere herein, said Local 59 did not enjoy a majority in said unit. Hence I find that paragraph 13 of the complaint has not been established. And I further find no violation of Section 8(a)(3) of the Act, as alleged in paragraph 9(h) to 9(1) of the complaint.

Finally, I find that the strike commencing on or about March 31, 1975, was not caused by any unfair labor practices of Desco, as I have found above that Desco did not commit any such transgressions of the Act.

2. As to the Respondent Unions

As found above, Respondent Desco did not commit any of the unfair labor practices imputed to it in the complaint. Some of the acts so ascribed to Desco are also alleged to have been joined in by Local 6 and Local 16. It would be superfluous to reiterate here those acts of said Local 6 and Local 16 which they committed with Desco; but I find, for the reasons mentioned above in finding no violations were committed by Desco that none were perpertrated by Local 6 and 16. Hence only the conduct of said unions alleged in the complaint to have been committed by either or both will be briefly discussed below.

Paragraph 9(e) of the complaint alleges that Local 16 solicited membership during working hours. But said Local 16 had permission from Desco to do so. Hence I find no violation of the Act by such colicitations. (And I have found above that Desco's granting such permission, wihout more, does not contravene the Act.) And I further find that in so soliciting Desco's employees neither Local 6 nor Local 16 engaged in any conduct forbidden by the Act, such as using coercion, threats, or promises of benefits. It follows, and I find, that neither Local 6 nor Local 16 committed any of the violations attributed to them in the complaint.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

Conclusions of Law

1. Local 6 and Local 16 each is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent Desco is an employer within the meaning of Section 2(2), and is engaged in commerce as defined in Section 2(6) and (7), of the Act.

3. An appropriate unit for the purposes of collective bargaining is that set forth in paragraph 10 of the complaint.

4. None of the Respondents, i.e., Desco, Local 6, and Local 16, has committed any unfair labor practices as alleged in the complaint.

Upon the foregoing findings of fact conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: [1]

ORDER

IT IS ORDERED that the complant be, and it hereby is, dismissed in its entirety.

Dated at Washington, D.C. SEP 8 1975

James V. Constantine

James V. Constantine
Administrative Law Judge

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[1] In the event no exceptions are filed as provided in Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

158

453

FILE
Sec. 0

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

FILE IN
FORMAL FILE

DESCO VITRO-GLAZE OF SCHENECTADY, INC.

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE,
SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS,
TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC
AND TERRAZZO WORKERS HELPERS, AFL-CIO

Case No. 3-CA-5993

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS, MARBLE,
TILE AND TERRAZZO WORKERS INTERNATIONAL UNION,
AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE,
SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS,
TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC
AND TERRAZZO WORKERS HELPERS, AFL-CIO

Case No. 3-CB-2498-1

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS, MARBLE,
TILE AND TERRAZZO WORKERS INTERNATIONAL UNION,
AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE,
SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS,
TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC
AND TERRAZZO WORKERS HELPERS, AFL-CIO

Case No. 3-CB-2498-2

342

GENERAL COUNSEL'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel hereby files exceptions to Administrative Law Judge James V. Constantine's Decision dated September 8, 1975, submitting that the Administrative Law Judge erred in the following:

1. The finding and conclusion that the conduct of Respondent Desco President Cordi and Job Superintendent King in engaging in interrogation; solicitation of employees to withdraw from the Charging Party; solicitation of employees to join Respondent Locals 6 and 16; and threats of discharge for failure to join Respondent Locals 6 and 16; and in loaning money to employees to join Respondent Locals 6 and 16; and in permitting

these two unions to solicit membership on Company premises, did not constitute 8(a)(1) and (2) violations against Respondent Employer, or 8(b)(1)(A) and (2) violations against Respondent Unions. (JD p. 4, lines 24-49; p. 5, lines 1-21; p. 7, lines 26-42; p. 9, lines 30-40, 47-49; p. 10, lines 1-11, 20-33, 46-52; p. 11, lines 1-8; p. 12, lines 14-17, 23-44; p. 14, lines 6-15, 19-26, 36-40; p. 16, lines 16-19, 29-44; p. 17, lines 7-30, 38-49; p. 18, lines 10-17; p. 19, lines 29-39; Tr. 66-88, 205-207, 209-212, 271-280, 288, 302-308, 349-350, 353, 355-357, 405-415, 465-466, G.C. Exhs. 4, 20, 24 and 25)

2. The finding and conclusion that Local 59 lost its majority status in its unit without any unlawful conduct by any of the Respondents, and that Respondent Locals 6 and 16 obtained a valid majority in the Local 59 unit so as to justify Respondent Employer's recognition of Respondent Unions and extension of an existing contract with said Respondent Unions containing a union security clause to cover said unit, and withdrawal of recognition from Local 59 for said unit. (JD p. 3, lines 34-43, 45-53; p. 4, lines 1-12; p. 5, lines 48-50; p. 6, lines 1-12, 35-44; p. 7, lines 2-6; p. 12, lines 6-9; p. 15, lines 46-49; p. 16, lines 5-14, 46-50; p. 17, lines 1-4, p. 18, lines 28-39; p. 19, lines 18-27; p. 20, lines 5-6; Tr. 15-18, 22-25, 33-36, 49-50, 54, 66, 84-85, 104-115, 122-123, 126-130, 134-142, 151-153, 159-164, 166-171, 179, 185-189, 194-196, 214-220, 225, 255-260, 268, 275-276, 299-302, 308, 310, 314-335, 337-338, 354, 357-358, 421-429, 432-434, 451, 457; G.C. Exhs. 2, 3, 5 through 9, and 11 through 15)

3. The finding and conclusion that Section 8(f) of the Act permitted Respondent Desco to recognize and bargain with Respondent Locals 6 and 16 without proof of majority. (JD p. 18, lines 42-50)

4. The finding and conclusion that Respondent Desco had a right to change existing wage rates and other terms and conditions of employment of employees in Local 59's bargaining unit without bargaining with Local 59 because Local 59 lost its majority status. (JD p. 5, lines 23-27; p. 6, lines 1-18, p. 8, lines 14-16; p. 9, lines 42-47; p. 10, lines 43-46; p. 11, lines 15-20, 33-36; p. 13, lines 2-3; p. 19, lines 1-9; Tr. 225)

5. The finding and conclusion that the strike was not an unfair labor practice strike. (JD p. 8, lines 17-23; p. 19, lines 11-14; Tr. 225-229, 239, 282-283, 311)

6. The finding and conclusion that none of Respondents committed unfair labor practices as alleged in the Complaint, and that the Complaint should be dismissed; and the failure to find and conclude that the Respondents violated the Act as alleged in the Complaint and to provide an appropriate remedy therefor. (JD p. 20, lines 8-19)

7. The ruling during the hearing refusing to admit in evidence membership rolls of Local 59 showing the members it had employed at Respondent Desco in 1974 and 1975. (Tr. 197-201; Rejected G.C. Exh. 19).

Respectfully submitted,

Paul V. Mulkern Jr
Thomas J. Sheridan

THOMAS J. SHERIDAN and
PAUL V. MULKERN, JR.
Counsel for the General Counsel
NATIONAL LABOR RELATIONS BOARD
Albany Resident Office
Third Region
Leo W. O'Brien Federal Building - Room 342
Corner of Clinton Ave. & No. Pearl St.
Albany, New York 12207

DATED at Albany, New York

this 26th day of September, 1975.

EXPLANATION PAGE

PAGES 456 TO 469 WERE OMITTED FROM
THE APPENDIX

470

Albany, N.Y.

FILE
Exec. Sec. 0

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DESCO VITRO-GLAZE OF SCHENECTADY, INC.

and Case 3-CA-5993

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS
INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and Case 3-CP-2498-1

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 16, BRICKLAYERS, MASONS, PLASTERS,
MARBLE, TILE AND TERRAZZO WORKERS
INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and Case 3-CP-2498-2

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

ORDER

On September 8, 1975, Administrative Law Judge James V. Constantine issued his Decision in the above-entitled proceeding and, on the same date, the proceeding was transferred to the Board. In his Decision, the Administrative Law Judge found that Respondents had not committed any unfair practices alleged in the complaint and recommended that the complaint be dismissed in its entirety.

Thereafter, General Counsel filed exceptions and a supporting brief and Charging Party joined in General Counsel's exceptions.

GC #1(d)

The Board has considered the record and the Decision in light of the exceptions and briefs and has decided to order a new hearing herein because of the Administrative Law Judge's injudicious conduct of the hearing. It is clear from the record that both the General Counsel and Respondent Employer were prevented by the Administrative Law Judge from presenting and fully developing relevant evidence at the hearing to an extent which, in our view, constitutes a denial of due process. Furthermore, the record contains numerous improper and intemperate comments by the Administrative Law Judge directed to the parties, the witnesses, and the Board which create serious doubt as to whether the standards for impartiality and judiciousness which the Board expects of its Administrative Law Judges were fully met herein.

In view of the foregoing, the Board is of the opinion that it will best effectuate the policies of the National Labor Relations Act, as amended, to remand the case and hold a hearing *de novo* on the merits of the complaint before a different Administrative Law Judge.[1] The Board recognizes the inconvenience and expense this disposition imposes on the innocent parties, but can discern no other course of action which will serve to protect the integrity of Board proceedings and to avoid even the appearance of a denial of due process in the conduct of hearings. Accordingly,

IT IS HEREBY ORDERED that a hearing *de novo* be held before a different Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose of receiving evidence on the issues raised by the allegations of the complaint and the Respondent's answer thereto.

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[1] Chairman Murphy would remand for a new hearing on the additional ground that the Administrative Law Judge improperly denied Respondent's motion made at the hearing that he disqualify himself, inasmuch as the record establishes that the Respondent's motion was prompted by the Administrative Law Judge's arbitrary and intemperate conduct.

472

IT IS FURTHER ORDERED that the above-entitled proceeding be, and it hereby is, remanded to the Regional Director for Region 3 for the purpose of arranging such hearing and that the said Regional Director be, and he hereby is, authorized to issue notice thereof.

IT IS FURTHER ORDERED that, upon the conclusion of the hearing, the Administrative Law Judge shall prepare and serve on the parties a Supplemental Decision containing findings of fact, conclusions of law, and recommendations based upon the evidence received and that, following service of such Supplemental Decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.

Dated, Washington, D.C., March 1, 1976.

By direction of the Board:

John C. Truesdale

Executive Secretary

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

*****

DESCO VITRO-GLAZE OF SCHENECTADY, INC.

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO
CASE 3-CA-5993

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS
INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO
CASE 3-CB-2498-1

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS INTER-
NATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)
CASE 3-CB-2498-2

and

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

MOTION FOR RECONSIDERATION OF BOARD ORDER DATED MARCH 1, 1976 DIRECTING A HEARING *de novo* IN THE ABOVE ENTITLED CASES

Respondent, Desco-Vitro Glaze of Schenectady, Inc., by its attorney, DANIEL J. SMITAS, moves pursuant to §10(d) of the National Labor Relations Act, as amended, and §102.48 of the Board's Rules and Regulations, for reconsideration of the Board's Order dated March 1, 1976, wherein the Board ordered, among other things, a hearing de novo in the above-entitled cases, and in support thereof, respectfully submits the following grounds for reconsideration:

1. That the conduct of the Trial Examiner, to say the least, was unusual and certainly there was a denial of due process against the respondents in this case, and in particular with respect to conduct against the undersigned as attorney for respondent, Desco-Vitro Glaze of Schenectady, Inc.

Although the undersigned could not develop certain elements of its defense, the Trial Examiner apparently felt that he had a sufficient basis to dismiss the complaint of the General Counsel without the development of the offered testimony and exhibits.

The decision, for the most part, was made upon credibility findings to which respondents took no exceptions. If the factual findings are supported by the record and the Board finds on the law that the Trial Examiner had erred, then it is the position of respondent Desco that this case should be remanded to develop other areas of defense which were not allowed. To rule otherwise would be analogous to a situation where a charged felon, after trial, having the charges dismissed against him, being placed in jeopardy for a second time simply to afford him due process of law. Due Process is the vehicle to obtain a proper verdict or decision which must be afforded to the person to be charged.

Consequently, it is respondent Desco's position that the Trial Examiner making credibility findings which are sustained by the record, made a ruling on the law which should be sustained by the Board. If the Board cannot follow the application of the law as made by the Trial Examiner, then it should remand the case for hearing to allow respondents to develop any other defenses which they may have.

2. The General Counsel developed its case completely against respondents. As stated in respondent's Locals 6 and 16 Motion, dated March 8, 1976, in paragraph "2", the only exception relating to the exclusion of evidence made by the General Counsel was that concerning the submission of a list of Local 59 members employed by respondent Desco in 1974 and 1975. This can be found in General Counsel's Exhibit #7. It is our position that this evidence is already in the record as an exhibit by the inclusion of the welfare and pension fund reports which had been previously accepted in evidence. In the event that the Board finds that this evidence is not covered by said welfare and pension fund reports, it is respondent's position that it would have no objection to the acceptance of the rejected exhibit, marked General Counsel's Exhibit "19", in evidence.

It is further pointed out that the Rules and Regulations of the National Labor Relations Board in §102.46(h) states that no matter not included in exceptions or cross-exceptions may thereafter be urged before the Board, or in any other further proceeding.

Consequently, the General Counsel is precluded from excepting to any other portion of the trial not included in its previously filed exceptions. Therefore, the General Counsel cannot now allow that its proceeding did not afford respondents due process. Due process is a procedure which must be afforded to a charged party and not to the Government.

Counsel for respondent Desco certainly understands the Board's disapproval of such action on the part of its Administrative Judges and concurs wholeheartedly with the position taken by the Board, and in particular, the Chairman. However, to allow a new trial at this point would be a greater injustice to the respondents than that of the denial of any due process of law.

476

WHEREFORE, respondent Desco joins with respondents Locals Nos. 6 and 16 in their motion that the original Order of the Board, dated March 1, 1976, be rescinded, and that a further order be made affirming the decision of the Administrative Law Judge that respondents had not committed any unfair labor practices as alleged in the complaint. In the event the Board disagrees with the Administrative Law Judge's application of the National Labor Relations Act, then the Board should issue an order remanding the case for the development of the previously offered evidence.

Dated; March 19, 1976

Daniel J. Smitas
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Albany, N.Y.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

DESCO VITRO-GLAZE OF SCHENECTADY, INC.

and   Case 3-CA 5993

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS
INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and   Case 3-CB 2498-1

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS,
MARBLE, TILE AND TERRAZZO WORKERS
INTERNATIONAL UNION, AFL-CIO
(Desco Vitro-Glaze of Schenectady, Inc.)

and   Case 3-CB 2498-2

LOCAL 59, INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE, AND STONE POLISHERS,
RUBBERS, AND SAWYERS, TILE AND MARBLE
SETTERS HELPERS, MARBLE MOSAIC AND
TERRAZZO WORKERS HELPERS, AFL-CIO

ORDER DENYING MOTIONS

On March 1, 1976, the National Labor Relations Board issued an Order in the above-entitled proceeding in which the Board remanded the proceeding to the Regional Director for Region 3 for the purpose of scheduling a hearing _de novo_ before a different Administrative Law Judge on the issues raised by the allegations of the complaint and the Respondents' answers thereto.

Thereafter, on March 12, 1976, Respondents Local 6 and Local 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL-CIO, filed a Motion for Reconsideration, contending that none of the parties excepted to the conduct of the hearing by the Administrative Law Judge; that an unfair and onerous burden would be placed upon said Respondents by requiring them to proceed to a new hearing, and that the only exception filed with respect to the conduct of the hearing by the General Counsel and the Charging Party was to the Administrative Law Judge's refusal to admit into evidence a list of members of the Charging Party and that the Board could find merit in this exception and admit the proffered evidence. Respondents Local 6 and 16, therefore, request that the Board's Order be rescinded and that a further Decision and Order be issued affirming the Administrative Law Judge's Decision.

On March 22, 1976, Respondent Desco Vitro-Glaze of Schenectady, Inc., filed a Motion for Reconsideration in which it alleges that, although it had been denied due process of law by the Administrative Law Judge, he based his recommendation that the complaint be dismissed on credibility resolutions to which Respondents did not except and that, consequently, to remand the proceeding for a hearing *de novo* would be analogous to placing Respondents in double jeopardy. Respondent Desco further contends that it has no objection to the admission into evidence of the list of members of the Charging Party referred to above and that, as the General Counsel has not contended that he was denied due process of law, he is now precluded from litigating any matter not previously raised in his exceptions. Accordingly, Respondent Desco urges that the Board either adopt the Administrative Law Judge's Decision or, alternatively, remand the proceeding for a further hearing to allow Respondents to develop their defenses, which the Administrative Law Judge precluded them from doing.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Motions for Reconsideration filed by Respondents Local 6 and Local 16, Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers International Union, AFL-CIO, and by Respondent Desco Vitro Glaze of Schenectady, Inc., be, and they hereby are, denied as they contain nothing not previously considered by the Board.

Dated, Washington, D.C., May 10, 1976.

By direction of the Board:

George A. Leet
Associate Executive Secretary

479

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

******

FILE IN
FORMAL FILE
V.A.P.

DESCO VITRO GLAZE OF SCHENECTADY, INC.,

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE AND STONE POLISHERS, RUBBERS, AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO

CASE NO.
3-CA-5993
(Remand)

LOCAL 6, BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO (Desco Vitro Glaze of Schenectady, Inc.)

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE, AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO

CASE NO.
3-CB-2498-1
(Remand)

LOCAL 16, BRICKLAYERS, MASONS, PLASTERERS, MARBLE, TILE AND TERRAZZO WORKERS INTERNATIONAL UNION, AFL-CIO (Desco Vitro Glaze of Schenectady, Inc.)

-and-

LOCAL 59, INTERNATIONAL ASSOCIATION OF MARBLE, SLATE, AND STONE POLISHERS, RUBBERS, AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, AFL-CIO.

CASE NO.
3-CB-2498-2
(Remand)

EXCEPTIONS OF RESPONDENT, DESCO VITRO GLAZE OF SCHENECTADY, INC., TO DECISION OF ADMINISTRATIVE LAW JUDGE

Pursuant to §102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent Desco Vitro Glaze of

Schenectady, Inc. (hereinafter referred to as Respondent Desco), hereby files exceptions to Administrative Law Judge Michael O. Miller's decision dated December 22, 1976, submitting that the Administrative Law Judge erred in the following:

The findings and conclusions that respondent Desco:

1. Recognized Local 59 as a collective bargaining agent for a distinct unit of its employees hereinafter referred to as "Helpers", and was obligated to continue such recognition.

2. That such Helpers constitute an appropriate unit for collective bargaining.

3. That payment of prevailing wage rates and payment of certain welfare and pension funds of Local 59 prior to January of 1975 are indicative of recognition of Local 59 and compliance with Local 59's area agreement.

4. That no substantial change occurred in the means of employment of Desco's work force such as to effectively eliminate the need for any distinct unit of Helpers.

5. That an appropriate unit of Helpers was in existence from 1953 (Desco's inception) to February of 1975.

6. That by Desco's recognition of Locals 6 and 16 as collective bargaining agents for an appropriate unit of its employees and extension of its contracts with those unions to those employees, respondent Desco violated §8(a)(1) and §8(a)(2) of the Act.

7. That the strike commencing March 3, 1975 was an unfair labor practice strike.

8. That it was the prerogative of the Administrative Law Judge to use the previous testimony of certain witnesses at the initial hearing of this matter before Administrative Law Judge Constantine to buttress his credibility findings in this hearing (decision at page 4, lines 30-40, and page 8, lines 47-48), notwithstanding the order of the National Labor Relations Board that there be a "de novo" hearing.

9. That the credibility findings concerning the testimony of respondent Desco's President, Joseph Cordi, are based, in part, upon "its (Cordi's testimonies) tendency to be shaded so as to improve respondent-employer's argument".

10. Failure to find that respondent Desco was a member of the National Association of Decorative Architectural Finishes (NADAF) and as such bound by the terms and conditions of that triparte agreement.

11. Failure to find that respondent Desco made a lawful work assignment under the NADAF agreement to the Masons Unions.

12. Failure to find that certain employees were afforded a lawful opportunity to join the Masons union.

13. Failure to find that the Helpers Union struck respondent Desco's jobsites to force a change in work assignment.

14. Failure to find that respondent Desco had not violated Sections 8(a)(1)(2)(3) and (5) of the Act.

Further, Respondent Desco, through its attorney, Daniel J. Smitas, hereby joins in and with the Exceptions filed by Counsel for Locals 6 and 16 to the Decision herein as if the same were fully set forth at length herein.

WHEREFORE, respondent Desco Vitro Glaze of Schenectady, Inc., respectfully prays that an Order of the Board be issued consistent with the Exceptions filed herein, and that the complaint against respondent Desco be dismissed in its entirety.

DATED: JANUARY 28, 1977

DANIEL J. SMITAS
Attorney for Respondent Desco
Office and P. O. Address
56 Fuller Road
Albany, New York 12203
(518) 482-3345

TO WHOM IT MAY CONCERN:

I/We, the undersigned, agree to abide with all the terms and conditions which may be incorporated in any new contract entered into by and between the CAPITOL DISTRICT TILE, MARBLE, TERRAZZO AND SLATE CONTRACTORS' ASSOCIATION and LOCAL 59 of the INTERNATIONAL ASSOCIATION OF MARBLE STONE & SLATE POLISHERS, RUBBERS & SAWYERS, TILE & MARBLE SETTERS HELPERS & TERRAZZO WORKERS HELPERS to take effect May 1, 1967.

I/We, the undersigned, further agree to abide with any provisions in said contract dealing with wages, transportation and pension rights retroactive to May 1, 1967.

Dated:
5/8/67

Renato Petrucco

NATIONAL LABOR RELATIONS BOARD
Docket No. 3CA 5993 OFFICIAL EXHIBIT NO. G.C. #7
Disposition
Identified ✓
Received ✓
Rejected
In the matter of Desco Vitro-Glaze
Date 6/11/75 Witness
No. Pages
Reporter K.D.

GC-2
8/3/76 L.R.

484

IMPORTANT: All questions must be answered in entirety or applications will be returned to local for completion before being processed at International Headquarters.

APPLICATION BLANK

INTERNATIONAL ASSOCIATION OF

Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers

To Local No. .... Local Initiation Fee $ .... I. A. Registration Fee $ ....

Date of Application JANUARY 24 1975

Desiring to become a member of the INTERNATIONAL ASSOCIATION OF MARBLE, STONE AND SLATE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, I do hereby make application to Local No. .... of .... for admission to membership. In the event of my election to membership, I agree to conform to the Constitution, Laws, Rules and Regulations of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers or any Local of which I may hereafter become a member.

Name JOHN SOTIRIOU S.S. No. 118-42-6065

Address 913 STANLEY ST. SCHENECTADY, NY

Branch of Trade TERRAZZO Industry Marble / Tile / Stone / Slate / [✓ Terrazzo]

Served apprenticeship of .... years. What Shop? .... Worked at Branch of Trade .... years. Date of Birth JAN 10 1950 Age 25

Place of Birth TRIKALA (City) .... (State) GREECE (Country, if Foreign-Born)

Are you a citizen of the United States? YES If not, have you declared your intentions of becoming a citizen? .... Date of Declaration .... Length of residence in the United States ....

Length of residence in jurisdiction of Local in which you are applying for membership ....

Previous residential town or city .... Were you ever a member of any Local in this International Association? .... If so, what Local ....

CANADIAN APPLICANTS ONLY: Are you a citizen of Canada? .... Length of residence in Canada ....

Application Cancelled 1/27/75 Refunded

THERE MUST BE TWO VOUCHERS THAT ABOVE STATEMENTS ARE TRUE

Signature of Vouchers Constantin Bouros
David Levenberg

Name of Beneficiary ELIAS SOTIRIOU Relation of Beneficiary BROTHER

Address of Beneficiary SAME

It is agreed that in the event any of the statements I have made above are proved to be false I will forfeit my membership in the above named Association with all moneys paid into same.

Signature of Applicant x John Sotiriou

NOTE.—Initiation Fee and Registration Fee must accompany application.

TO BE FILLED OUT BY LOCAL SECRETARY

Application Received .... 19....

Referred to Investigating Committee .... 19....

Report of Committee .... Initiated .... 19....

Forwarded to Headquarters .... 19....

.... Signature of Recording Secretary.

(SEAL) Local No. ....

Application To Be Made Out in Duplicate and the Original Forwarded to Headquarters

ORIGINAL

IC-4 Recd
8/3/76 L.R.

485

IMPORTANT: All questions must be answered in entirety or applications will be returned to local for completion before being processed at International Headquarters.

APPLICATION BLANK

INTERNATIONAL ASSOCIATION OF

Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers

To Local No. .... Local Initiation Fee $ .... I. A. Registration Fee $ ....

Date of Application JANUARY 24 1975

Desiring to become a member of the INTERNATIONAL ASSOCIATION OF MARBLE, STONE AND SLATE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS. MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, I do hereby make application to Local No. .... of .... for admission to membership. In the event of my election to membership, I agree to conform to the Constitution, Laws, Rules and Regulations of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers or any Local of which I may hereafter become a member.

Name J. C. HAMILTON S.S. No. 230-28-7538

Address 1160 WESTERN AVE. ALBANY. N.Y. 12203

Branch of Trade TERRAZZO Industry Marble / Tile / Stone / Slate / [✓ Terrazzo]

Served apprenticeship of .... years. What Shop .... Worked at Branch of Trade .... years. Date of Birth JAN. 20, 1926 Age 49

Place of Birth McCLURE, VA.
City State Country, if Foreign-Born

Are you a citizen of the United States? YES If not, have you declared your intentions of becoming a citizen? .... Date of Declaration .... Length of residence in the United States ....

Length of residence in jurisdiction of Local in which you are applying for membership ....

Previous residential town or city .... Were you ever a member of any Local in this International Association? .... If so, what Local ....

CANADIAN APPLICANTS ONLY: Are you a citizen of Canada? .... Length of residence in Canada ....

Application Void Refunded 1/27/78

THERE MUST BE TWO VOUCHERS THAT ABOVE STATEMENTS ARE TRUE

Signature of Vouchers Constantin Psarras
John Leopotto

Name of Beneficiary MRS BERTIE HAMILTON Relation of Beneficiary MOTHER

Address of Beneficiary 282 SUNCREST DRIVE, BRISTOL, VA.

It is agreed that in the event any of the statements I have made above are proved to be false I will forfeit my membership in the above named Association with all moneys paid into same.

Signature of Applicant × J. C. Hamilton

NOTE.—Initiation Fee and Registration Fee must accompany application.

TO BE FILLED OUT BY LOCAL SECRETARY

Application Received .... 19....
Referred to Investigating Committee .... 19....
Report of Committee .... Initiated .... 19....
Forwarded to Headquarters .... 19....

....
Signature of Recording Secretary.

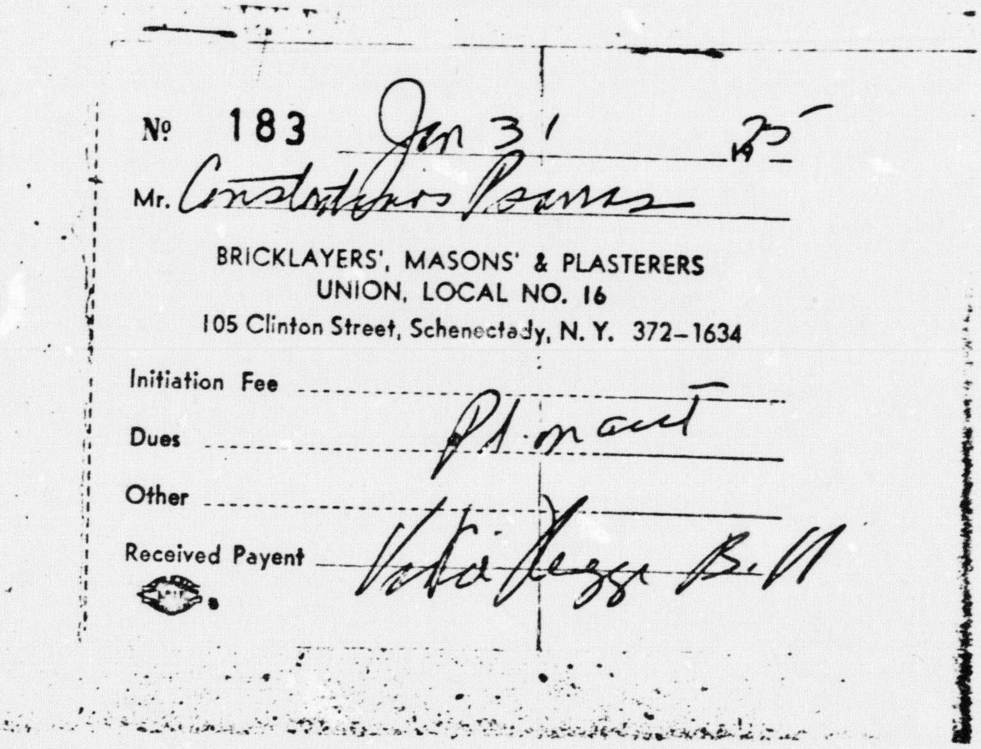
(SEAL) Local No. ....

Application To Be Made Out in Duplicate and the Original Forwarded to Headquarters

ORIGINAL

JJC-5
8/3/76 L.R. Resd

486



№ 183 Jan 31 19 75

Mr. Constantinos Psarras

BRICKLAYERS', MASONS' & PLASTERERS
UNION, LOCAL NO. 16
105 Clinton Street, Schenectady, N. Y. 372-1634

Initiation Fee

Dues Pd. on acct

Other

Received Payent Vito Reggi Bell

PJC-6
8/3/76 L G

487

IMPORTANT: All questions must be answered in entirety or applications will be returned to local for completion before being processed at International Headquarters.

APPLICATION BLANK

INTERNATIONAL ASSOCIATION OF

Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers

To Local No. 59 Local Initiation Fee $ I. A. Registration Fee $

Date of Application FEBRUARY 24 1975

Desiring to become a member of the INTERNATIONAL ASSOCIATION OF MARBLE, STONE AND SLATE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS, I do hereby make application to Local No. 54 of ALBANY N.Y. for admission to membership. In the event of my election to membership, I agree to conform to the Constitution, Laws, Rules and Regulations of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, Marble Mosaic and Terrazzo Workers Helpers or any Local of which I may hereafter become a member.

Name DIMITRIOS EVANGELIDIS S.S. No. 066-48-8708

Address 1552 HELDERBERG AVE. SCHENECTADY N.Y. 12306

Branch of Trade TERRAZZO Industry Marble / Tile / Stone / Slate / [✓ Terrazzo]

Served apprenticeship of years. What Shop? Worked at Branch of Trade years. Date of Birth JULY 24, 1946 Age 28

Place of Birth ATHENS, (City) GREECE (State) (Country, if Foreign-Born)

Are you a citizen of the United States? If not, have you declared your intentions of becoming a citizen? Date of Declaration Length of residence in the United States

Length of residence in jurisdiction of Local in which you are applying for membership

Previous residential town or city Were you ever a member of any Local in this International Association? If so, what Local

CANADIAN APPLICANTS ONLY: Are you a citizen of Canada? Length of residence in Canada

THERE MUST BE TWO VOUCHERS THAT ABOVE STATEMENTS ARE TRUE

Signature of Vouchers George B. Kutzler

Name of Beneficiary ANGELIKE EVANGELIDIS Relation of Beneficiary WIFE

Address of Beneficiary SAME

It is agreed that in the event any of the statements I have made above are proved to be false I will forfeit my membership in the above named Association with all moneys paid into same.

Signature of Applicant Dimitrios Evangelidis

NOTE.—Initiation Fee and Registration Fee must accompany application.

TO BE FILLED OUT BY LOCAL SECRETARY

Application Received 19

Referred to Investigating Committee 19

Report of Committee Initiated 19

Forwarded to Headquarters 19

Signature of Recording Secretary.

(SEAL) Local No.

Application To Be Made Out in Duplicate and the Original Forwarded to Headquarters

ORIGINAL

3C-7

8/3/76 L.R.

488

DESCO VITRO GLAZE OF SCHENECTADY
INCORPORATED
2675 CURRY ROAD
SCHENECTADY, NEW YORK 12303
BOX 66 CRANE STREET STATION
(518) 355-3020

December 1972 to July 19, 1973	$ 7.50	.30 (.30)	Pension Savings
July 20, 1973 to July 19, 1974	$ 7.93	.30 (.30)	Pension Savings
July 20, 1974 to Present	$ 8.38	.30 (.30)	Pension Savings

NATIONAL LABOR RELATIONS BOARD
Docket No. 3 CA 5993 OFFICIAL EXHIBIT NO. G.C. #13
Disposition
Identified ✓
Received ✓
Rejected
In the matter of Desco Vitro - Glaze
Date 6/11/75 Witness ______ Reporter K.D.
No. Pages

GC # 11
MM
6/4/76

CONTRACTOR FOR SPECIAL WALL, FLOOR AND DECK APPLICATIONS -- PAINTING AND FINISHING

489

Andrew J. Britt
President

ELREP, LTD.

P. O. Box 2042
Empire State Plaza Station
Albany, New York 12220

294 Washington Street — Rm. 430
Boston, Massachusetts 02108
617—426-7814

80 Centre Street — Rm. 295
New York, New York 10007
212—267-4043

August 18, 1976

FILE

Judges Div.

Hon. Michael O. Miller
Office of Administrative Law Judges
National Labor Relations Board
1717 Pennsylvania Ave., N.W.
Washington, D. C. 20570

Re: Desco Vitro Glaze of Schenectady,
Inc., Case Nos. 3-CA-5993 and
3-CB-2498-1, -2
At Albany, New York
August 3, 4, and 5, 1976

Dear Mr. Miller:

Attached is the correct General Counsel's Exhibit Number 11, properly marked for identification and in evidence by the reporter, to be inserted in your Original General Counsel's Exhibits in the above-entitled matter.

The one page document marked in your Original exhibits as GC-11 should be marked as GC-12.

We extremely regret this error on our part.

Very truly yours,
ELREP, LTD.
Margie E. Haverly
Margie E. Haverly, Office Mgr.

cc: Paul Mulkern, Esq. - NLRB
Daniel J. Smitas, Esq.
Maurice Abrams, Esq.

WORKING AGREEMENT

Between

Capital District Tile, Marble, Terrazzo and
Slate Contractors Association

and

Local 59 of the International Association of
Marble, Stone and Slate Polishers, Rubbers and
Sawyers, Tile and Marble Setters Helpers and
Marble Mosaic and Terrazzo Workers Helpers

* * * * * * * * * * * * *

This Agreement, made and entered into on the 12th day of October 1973, by and between the Capital District Tile, Marble, Terrazzo and Slate Contractors' Association, Party of the First Part, and Local 59 of the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers, Party of the Second Part, shall become operative and effective on the 1st day of June 1973 and continue in full force and effect until August 31, 1976.

ARTICLE I
Bargaining

In accordance with and subject to the provisions of the Labor-Management Relations Act of 1947, as amended, the Party of the First Part recognized the Party of the Second Part as the exclusive bargaining agent for all employees included under the terms and conditions of employment and all other matters covered by this Agreement. This Agreement shall cover all work performed by Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers, and Terrazzo Workers Helpers coming within the recognized jurisdiction of Local 59 affiliated with our International Union AFL-CIO.

It is understood and agreed by and between the Parties hereto that, as a condition of continued employment, all persons that are hereafter employed in the unit which is the subject of this agreement shall make application to the Union after seven (7) days from the date of their employment.

The failure of any person to make application to the Union within said period of time shall obligate the employer, upon notice from the Union to such effect and to the furthur effect that Union membership was available to such person on the same terms and conditions generally available to other members, to forthwith discharge such person.

491

ARTICLE II
Wages, Pension and Savings

The scale of wages to be paid Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers to be:

Effective July 20, 1973	$7.93 per hour
Effective July 20, 1974	$8.38 per hour
Effective July 20, 1975	$8.86 per hour

An employee subject to this agreement shall be notified four (4) hours prior to a layoff. Employee and Business Agent to be notified at noon, the day of layoff. He shall receive his wages in full at that time and be allowed 15 minutes to clean and pack his tools. Layoff slips must be provided in envelopes.

Pension Fund* (See Note)

The employers agree to pay thirty cents ($.30) per hour for each hour for which the employee worked, and is covered by this Agreement, to the Capital Area Masons' Pension Fund. The contribution of employers shall be used, exclusively, to provide pension benefits to eligible employees, in such form and amount as the Trustees of the Pension Fund may determine. The said Pension Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and the Union, which Agreement and Declaration of Trust shall conform to all requirements of the law. A copy of said Agreement and Declaration of Trust, together with any amendments thereto, shall be considered as a part of this Agreement as though set forth here at length.

Savings Plan* (See Note)

The sum of fifty cents ($.50) per working hour shall be deducted by the employer for each employee under his employ and deposited in a savings fund at Fidelity Bank of Colonie by the 10th of each month.

Coffee Break

A ten (10) minute coffee break is permitted when coffee is available in the immediate vicinity of the job site. Such privilege to continue unless abused by employee.

Show-Up Time

In the event employee is required to be available for work but cannot due to the fault of the employer, show-up time of one (1) hour shall prevail.

* The Pension and Savings Funds to remain effective until such time that both can be consolidated.

ARTICLE III

EXPENSE ALLOWANCE

Expenses of the employees required to work away from home shall be paid according to the following:

0 to 8 miles: Free zone from the City Hall of the city of employer.

From Free Zone next 60 miles: Ten cents (10¢) per mile each way, with a seven dollar and fifty cents ($7.50) maximum per day.

60 miles from Free Zone to 75 miles: Ten dollars ($10.00) per working day.

From Free Zone 75 miles and beyond: Twelve Dollars ($12.00) per working day

City Hall	60 miles	15 miles	Beyond
8 mi. Free	10¢ per mi. each way Maximum $7.50	$10 per working day	$12 per working day

Transfers - $10 and $12 Zones:

In the event an employee is transferred from one expense zone to another during the work week for the convenience of the contractor, an added expense is involved for additional room rent, the Employer shall reimburse the employee for this added expense.

In the event employees are required to be available and ready to work at the job site but cannot due to conditions beyond their control, the expense rate per working day as set forth above shall be paid for each day such conditions exist.

Holidays that occur during the work week shall be considered for expense purposes as a working day. When a holiday occurs on a Monday and/or on a Friday, such a holiday shall be considered as a working day and expense allowance of $6.00 shall be paid for that day. Employee must be on the job the working day before and the working day after the holiday to qualify for this provision.

Out-of-town contractors shall pay expenses calculated from the City Hall of Albany, New York.

Employees should be notified if the job is less than one week's duration.

ARTICLE IV

HOURS

Eight (8) hours shall constitute a work day. If employee of his own volition or choice shall leave the job before completing eight (8) hours of work, he shall be paid only for the hours actually worked. It shall be the responsibility of each man to report the actual hours worked.

Optional starting time permissible between 7:30 and 8 a.m., by mutual consent of the contractor and Business Agent of the Union only.

In regard to a regular work day's hours, if an unusual condition presents itself, the matter shall be submitted to the Arbitration Committee for clarification and decision.

Helpers, at work away from home, shall be guaranteed eight (8) hours pay. This provision applies to the $12 zone, only.

The regular working hours under this Agreement shall be eight (8) hours a day between the hours of 8 a.m. and 4:30 p.m. and the regular working days are Monday, Tuesday, Wednesday, Thursday and Friday. Any time worked after regular working hours until 12:00 midnight on regular working days to be paid at the rate of time and one-half. Double time shall be paid for hours worked between 12:00 midnight and regular working hours, 8:00 a.m.; also for hours worked on Saturday, Sunday and legal holidays. Scheduled or bid contracts will be paid as double time.

Employees shall have 5 minutes to clean tools at end of each day.

Legal holidays are: New York's Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

ARTICLE V

PAYMENT

Wages shall be paid by cash. Members of the Association may pay wages by check. Other employers and the Union may agree to pay by check; if so the following conditions shall be met:

No more than 2 days shall be withheld.
Payment by check, no later than 4:30 p.m. on Thursday.
Payment by cash, no later than 4:30 p.m. on Friday.

Upon notice and demand by the Union, an individual contractor, without established credit, shall be required to secure a bond, or deposit cash to guarantee the payment of all wages and fringe benefits, as provided for under the terms of this Agreement.

Each employer, appearing on the delinquency reports for nonpayment of fringe benefits, will be required to promptly post a surety bond or deposit cash to guarantee payment of wages and fringe benefits.

The surety or cash bond shall be in the amount of $5,000.00. Each surety bond shall be for the entire agreement period.

The employer shall pay wages at specified time. If employer fails to do so, he may be liable for waiting time not to exceed two days.

All envelopes to be plainly marked as to name of employer, employee, all deductions such as Social Security, withholding tax, pension and savings. All employees are to be covered by compensation, unemployment insurance, Social Security and disability benefits.

ARTICLE VI

ARBITRATION

Section A

All disputes that may arise under the terms and conditions growing out of this Agreement shall be settled by arbitration. There is to be no work stoppage of work pending settlement by arbitration. Arbitration Board to consist of three members selected by the Party of the First Part and three members selected by the Party of the Second Part. Since the deliberation of this Arbitration Board will involve the peculiar facts, processes and customs of the Marble, Tile and Terrazzo business, such members of the Second Part shall be members of the Tile, Marble and Terrazzo Helpers Local Union No. 59 covered by this Agreement. The Party of the First Part shall have the right to have an equal amount of members as the Party of the Second Part. Business Agents of each Local shall have the privilege of serving in the committee if elected. The decision of this Board shall be final and binding on both Parties.

Section B

In the event that the Arbitration Board cannot agree upon the question in controversy, each Party shall designate an arbitrator and the two shall choose a third, and the third shall constitute an Arbitration Board. Both Parties shall supply each arbitrator with all data and information bearing on the controversy and the cost of such arbitration shall be borne equally by both Parties of this Agreement. The award of such Arbitration Board shall be binding and final on both Parties who shall have no recourse to any other tribunal or procedure. Pending the final award of such Board, it is hereby agreed that there shall be no strikes, lockouts or stoppage of work, individually or collectively, on any project involved in the controversy.

ARTICLE VII

NATIONAL AGREEMENT

It is understood and agreed by both Parties that the National Agreement by and between the Tile Contractors of America, Inc. and the International Association of Marble, Stone and Slate Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers shall form a part of this Agreement.

ARTICLE VIII

FOREMEN

All foremen shall be qualified and experienced in the trade of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Workers Helpers.

When three (3) or more helpers are employed on a project, one shall be appointed foreman.

When ten (10) or more helpers are employed on a project, the foreman shall receive at least twenty five cents ($.25) per hour above the helpers scale.

There shall be no restriction as to the appointment by the contractor of a foreman. The foreman must be competent in the particular line of work to be accomplished.

The Party of the First Part may have the privilege to pay the appointed foreman, regardless of the number of members employed, additional compensation not to exceed twenty five cents ($.25) per hour above the helpers rate, when the circumstances in his judgement requires it.

The helper foreman shall not be restricted from performing regular duties and he must consult with mechanic foreman so that proper coordination and efficiency are maintained on all jobs.

The helper foreman shall work under the direction of the superintendent and mechanic foreman at all times.

Probationary Helper

Probationary helpers' wage scale shall be seventy five cents ($.75) per hour lower than the wage scale set forth in Article II for a period of one thousand (1000) hours of work. Probationary helpers shall receive all fringe benefits provided in this Agreement.

In case of a layoff on any job by a contractor, the probationary helper will be laid off before any helpers are laid off provided the helper is qualified to perform the work.

Stewards

It is recognized that the Union has the right to appoint the job steward. The Union Business Agent must inform the employer, or his representative, of such appointment. Stewards shall be allowed reasonable time to perform their duties on the job.

ARTICLE IX

WORKING CONDITIONS

The employer on any job shall determine the number of helpers to be employed, and the established customs of each trade as outlined below shall be performed and maintained by the helpers. These are in general but not limited to the following:

Helpers shall do all the cleaning and grouting, mixing, handling and distributing of all materials used by a Marble Mason in connection with marble, slate, precast terrazzo, etc.

Helpers shall do all the mixing, grouting, cleaning, handling and distribution of materials used by a Tile Setter in connection with ceramic tile, quarry tile, pavers, etc.

Helpers shall do all the mixing of sand and cement, terrazzo chips, including all compositions, and handle and distribute all materials used by the Terrazzo Mechanic.

Helpers shall do all the grinding, polishing, grouting, cleaning and waxing on all terrazzo (and/or composition) put down by the Terrazzo Mechanic.

The Parties hereto shall use their best efforts in the industry's and public's interest to increase production and reduce costs by maintaining more hour output and to use all machinery, tools, appliances or methods which may be practical.

Employer shall provide protective clothing in periods of inclement weather or due to conditions on the job.

No Employer, nor anyone having financial interest in a company, shall perform the duties of a helper.

Helper must have the proper tools to perform his job. (Such as. Trowel, hammer, chisel, rubber gloves, etc.)

All out-of-town contractors permitted to bring one key man only.

No Helper shall be required to report to the shop before 7:30 a.m. or after 4:[illegible] p.m. to receive orders.

Preservation of Work

It is contrary to the sound business principles and spirit of this Agreement for employers to work with the tools, thus depriving workmen of employment, and in no case shall any member of a firm be permitted to work with the tools.

A "contractor" or "employer" within the meaning of this Article includes any individual or the spouse of any individual who, no matter what the form of the enterprise, may be, is alone or jointly a real party in interest in the contracting establishment or as legal or undisclosed or disclosed beneficial owner or corporate officer or director or otherwise directly or indirectly manages, directs or controls the business.

ARTICLE X

NEGOTIATIONS

It is mutually agreed by both Parties to this Agreement that one hundred fifty days (150) prior to the expiration of this Agreement that they shall meet in joint session for the purpose of formulating a new agreement pending the accomplishment of which this Agreement shall remain in full force and effect.

ARTICLE XI

PROTECTION

Any employer of six (6) or more employees is required to supply suitable arrangements under lock and key for storing employees tools against fire and theft from force of entry. Employee is to use reasonable precautions when storing his tools and equipment outside of regular working hours. Employer is to cover such loss by proper methods.

The Union shall not afford to any other employer with whom it signs a contract, terms or conditions more favorable than those incorporated in this contract.

ARTICLE XII

STATUTE

If any provision of this Agreement shall violate any applicable statute, or is held invalid by any court or government agency having jurisdiction, such invalidity shall not affect the validity of the remainder of this Agreement and such provisions or Article shall be void.

ARTICLE XIII

INTERPRETATIONS

The Joint Committee reserves the right to make the final interpretations of any of the Articles in this Agreement, subject to the rules for arbitration set forth in Article VI.

ARTICLE XIV

JURISDICTIONAL AREA

The jurisdictional area of Local 59, as conceded to its charter by the International Association, is as follows:

New York Counties of Albany, Clinton, Columbia, Essex, Franklin, Greene, Rensselaer, Schenectady, Schoharie, Saratoga, Warren and Washington.

Massachusetts County: Berkshire.

Also in New York State:

The eastern part of Montgomery County, east of Canajoharie, including the township of Fonda.

The eastern part of Fulton County, including the township of Gloversville to north county line.

The southeast part of Otsego County, southeast of Cooperstown, but including the township of Maryland.

The eastern part of Delaware County, east of Cooks Falls but including the townships of Delhi, Meredith and Davenport Center.

IN WITNESS WHEREOF we have hereunto set our hands and attached the official seals of our respective organizations this 12th day of October, 1973, in the City of Albany, State of New York.

LOCAL NO. 59 OF THE INTERNATIONAL
ASSOCIATION OF MARBLE, STONE AND
SLATE POLISHERS, RUBBERS AND SAWYERS,
TILE AND MARBLE SETTERS HELPERS,
AND MARBLE MOSAIC TERRAZZO WORKERS
HELPERS

David Lavenberg

Frank Glogowski

CAPITAL DISTRICT TILE,
MARBLE, TERRAZZO AND SLATE
CONTRACTORS ASSOCIATION, INC.

Daniel A. Lanzetta, Jr.

John B. Lanzetta

Victor V. Mion, Sr.

George H. DiBernardo

Local 59 Tile-Marble Helpers

Company________________________

9/17/74
pep

Signature________________________

Date____________________

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INTERNATIONAL ASSOCIATION OF
MARBLE, SLATE AND STONE POLISHERS, RUBBERS AND SAWYERS, TILE AND MARBLE SETTERS HELPERS, MARBLE MOSAIC AND TERRAZZO WORKERS HELPERS
AFFILIATED WITH THE AFL-CIO AND THE BUILDING & CONSTRUCTION TRADES DEPARTMENT

LOCAL UNION NO. 59
COMPOSED OF Tile Marble Terrazzo
OF Albany, New York

WRITER'S ADDRESS

December 12, 1974

RECEIVED
DEC 13 1974
DESCO VITRO GLAZE

11 Crestwood Court
Albany, New York

Desco Vitra Glaze
2675 Curry Road
Schenectady, New York

Gentlemen:

Enclosed is 3 copies of our working agreement.

Kindly sign 2 copies and return them to this office.

By law, signed agreements are necessary, since fringe benefits are being deducted from the men's wages. Both Employer and Union could be held in violation, without agreements.

Your immediate response is appreciated.

Thank you.

Sincerely,

David Lavenberg

David Lavenberg
Business Agent

Exhibit "D"

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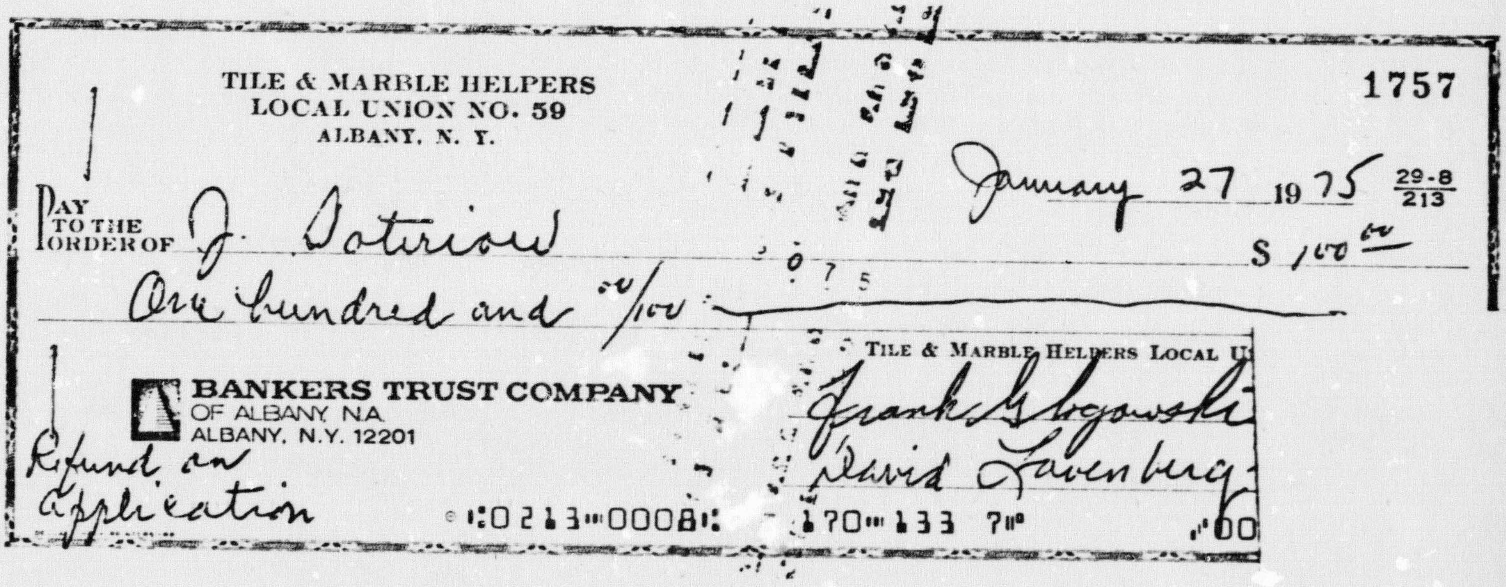

TILE & MARBLE HELPERS
LOCAL UNION NO. 59
ALBANY, N. Y.

1757

January 27 1975

29-8
213

PAY TO THE ORDER OF J. Sotiriou

$ 100 00

One hundred and 00/100

BANKERS TRUST COMPANY
OF ALBANY, N.A.
ALBANY, N.Y. 12201

Refund on application

TILE & MARBLE HELPERS LOCAL U

Frank Glogowski
David Lavenberg

⑆0213⑈0008⑆ 170⑈133 7⑈ ⑈00

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FOR THE CONSTRUCTION INDUSTRY

815 Sixteenth Street, N.W., Washington, D.C. 20006
STerling 3-6817

March 14, 1975

In Reply Refer to:
NY 3/14/75

WYLIE LAWHEAD General President
International Association of Marble, Slate
and Stone Polishers, Rubbers and Sawyers, Tile
and Marble Setters Helpers and Terrazzo Helpers
821 Fifteenth Street N W
Washington D C 20005

THOMAS F MURPHY General President
Bricklayers Masons and Plasterers
International Union
Bowen Building
Washington D C 20005

WALSH AND CORBETTA
Contractor
Box 1127
Albany New York 12201

DESCO VITRO GLAZE OF SCHENECTADY NY
Subcontractor
2575 Curry Road
Schenectady New York 12303

Gentlemen:

At its meeting March 13, 1975 the Impartial Jurisdictional Disputes Board considered the jurisdictional dispute between the International Association of Marble, Slate and Stone Polishers, Rubbers and Sawyers, Tile and Marble Setters Helpers and Terrazzo Helpers and the Bricklayers Masons and Plasterers International Union over the unloading, handling and distributing of material also the mixing, grinding and assisting of the terrazzo mechanic (Chemical Products Worker) in the installation of Dex-O-Tex seamless flooring, Empire State Plaza Mental Health Laboratory Building project, Albany New York, Walsh and Corbetta contractor, Desco Vitro Glaze of Schenectady NY subcontractor.

The Board voted to make the following job decision: The work in dispute shall be assigned to terrazzo helpers on the basis of trade practice.

This action of the Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

Fred J Driscoll

FRED J DRISCOLL, JR
Chairman

FJDJR/mjk

cc: Robert A Georgine - B&CT Dept
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Rec'd

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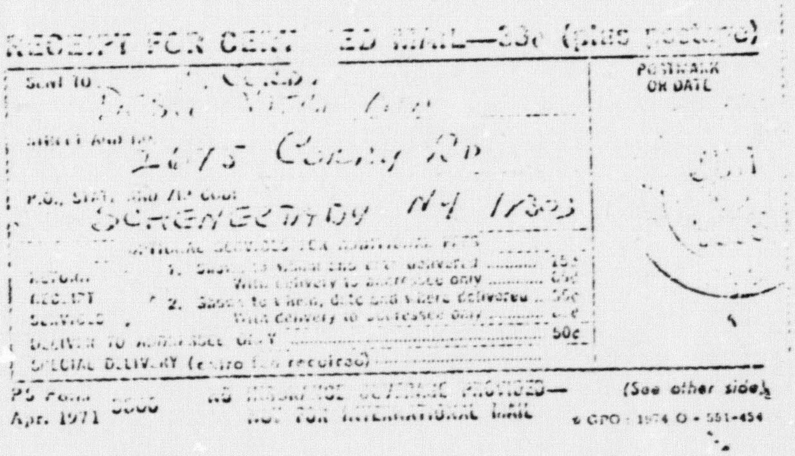

RECEIPT FOR CERT ED MAIL—30¢ (plus postage)

SENT TO [illegible] Corp.
[illegible]

STREET AND NO.
2675 Corny Rd

P.O., STATE AND ZIP CODE
Schenectady NY 12303

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ... 15¢
With delivery to addressee only ... 65¢
2. Shows to whom, date and where delivered ... 35¢
With delivery to addressee only ... 85¢

DELIVER TO ADDRESSEE ONLY ... 50¢

SPECIAL DELIVERY (extra fee required) ...

POSTMARK OR DATE

PS Form 3800 Apr. 1971 NO INSURANCE COVERAGE PROVIDED— NOT FOR INTERNATIONAL MAIL (See other side)

GPO : 1974 O - 551-454

Receipt Card to GC # 17

502a

59

Tile Marble Terrazzo
Albany, New York

June 19, 1975

11 Crestwood Court
Albany, New York

Mr. Joseph Cordi
Desco Vitro Glaze of Schenectady
2675 Curry Road
Schenectady, New York

Dear Sir:

The following listed men unconditionally agree to return to work for Desco Vitro Glaze of Schenectady, immediately.

Dominico Coppola
Dimitrios Evangelidis
Dominick Maretta
Allie Mohamed, Jr.
Constantino Psarras
John Sotiriou
John Segatto

Truly yours,

David Lavenberg
Business Agent
Local 59, TMS Helpers

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County of Albany)
State of New York) SS Page One

Affidavit

I Constantine PSARRAS, having been duly sworn, depose and state:

1. I live at 845 Eastern Ave, Schenectady NY phone 372-4295

2. I have worked for Desco Vitro Glaze since late October, 1974. I worked on the Motor Vehicle Building and on the Mental Health Lab.

3- I joined Local 59 ~~[illegible]~~ in ~~Oc~~ October, and I finished paying my initiation fee in December 1974.

I joined because the helpers are members of Local 59. The person that took me to the Union was a member of Local 59. Joe Pardi or any other company supervisor did not tell me I had to join Local 59.

4- I am still a member of

Union #1
2/13/76 L.R.

Local 59. 504

5- On Monday Jan 27, 1975, I did not work. On 1/28, I returned to work and I heard about the problem that the new helpers, John Santoro and Hamilton, were having with the Union.

On 1/29/75, Kerry the superintendent asked me if I would like to become a mechanic. I said that was better for me – I said I didn't mind. On 1/30, they told us to bring the money for the new Union

6- On Friday, 1/31 Vince Riggi Bus. Agent of Local 16 came to the job. At lunch John Segatto the Foreman, asked whether we had brought the money for the new Union – that Joe Cardi was downstairs with Riggi.

I went to the office – Cardi, Segatto John Santoro Riggi and Michael ~~[illegible]~~ Evangelista were present.

Riggi asked whether I had the money – I said I didn't have the ~~check~~ cash, I had a payroll check.

He said he was not supposed to take that check. I asked Joe Cordi to cash the check for me. He did not have the money to cash my check, but he lent me $50.00 which I gave to Rizzi. Rizzi gave me a receipt which he had already made up. He asked me what my name was - I told him and he handed me the receipt without any amount on it.

At that point, I got the receipt and I left to return to lunch.

7 - The following week John Pezzotti told me that Rizzi was going to be on the job and that I should bring the rest of the money.

I told John that I would not have the money and would not have the money. ~~for a long while~~

On that Friday I was brought to the office again. Cordi, Rizzi, myself, Anthony Pezzotto, and King were present.

Rizzi asked if I had the

rest of the money. I said I did not. He asked when I'd have the money. I said that after 2 weeks payroll I'd let them know when I'd have it.

Riggi suggested that I have it the second Monday from that day, with the other 2 guys.

I said "No - I have other things to take care of" - I would let them know after that time.

8 - At that time, 2 mondays later, before we went to work, we (me, John Squeri & Michael) went to Local 16 - John & Michael wanted to pay some money to Riggi.

The 2 of them went upstairs, and returned quickly. They told me that Riggi would not take the money because he was having trouble with the other money, and that Riggi would be on the job on Friday.

9 - On Thurs. Cordi came to the job and gave us our payroll check. Cordi told me I should pay the rest of the

money to the new union or else I would be out of work.

I told him that the 2 guys (John + Michael) had offered to pay the money and Riggi wouldn't take it.

Corde said the reason Riggi wouldn't take the money was because they only wanted to pay $20.00. He said I'd better pay the full amount - the next day (Friday) - since Riggi would be on the job.

2/28/75

On Friday Riggi did not show up. Since then, I have not seen Riggi. Corde did not tell me that I had to pay any more money. As of today March 7 1975, Corde or King or Segalla has said nothing more about paying the money.

The day that Corde threatened me with the loss of my job was on Thurs. February 27. He told Michael the same thing at the same time, that unless we paid, we'd lose our jobs.

I have had read this statement of 6 handwritten pages and I swear it is ~~true~~ true to the best of my knowledge and belief.

X Constantin Barros

Read, Signed and sworn to before me this 4th day of March, 1975, in Albany N.Y.

X John H. [illegible]
CRB Field Exam.

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THREE PARTY NATIONAL
JURISDICTIONAL AND WORK RULES
AGREEMENT

Between

THE NATIONAL ASSOCIATION OF DECORATIVE ARCHITECTURAL FINISHES, INC.

and

THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA

and

THE INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES

THIS AGREEMENT made on February 1, 1972 among the NATIONAL ASSOCIATION OF DECORATIVE ARCHITECTURAL FINISHES, INC., for itself and each of its member companies herein referred to as Contractors; and the BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA for itself and each of its subordinate unions and journeymen members, herein referred to as BMPIU; and the INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES for itself and each of its subordinate unions and journeymen members, herein referred to as IBPAT.

WITNESSETH:

WHEREAS, the parties recognize that general technological changes in construction methods and materials have occurred in recent years; and

WHEREAS, advances in applied chemistry have provided the finishing trades with job-site produced plastic coatings that combine in a matrix natural and artificial aggregates of all types, which form interior-exterior decorative non-structural finishes of wide imitative and artistic effect; and

WHEREAS, BMPIU and IBPAT acknowledge that many types of these new plastic based finishes cut across their traditional craft lines, causing jurisdictional and work rules disputes between their district councils and subordinate local unions; and

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WHEREAS, the parties agree that it is in their best interests and in the public interest to eliminate such disputes which cause work stoppages, slowdowns, and other job progress impediments; and

WHEREAS, it is the intent of the parties to provide for a method for the amicable settlement of such disputes and to create a pool of skilled union journeymen qualified to apply products in the chemical coatings branch of the finishing trades;

IT IS THEREFORE AGREED:

ARTICLE I. WORK ASSIGNMENTS

A. Contractors shall assign qualified workers to chemical coatings jobs on the following general basis:

1. It shall be the work of the BMPIU to install all such materials as are applied by a work technique common to BMPIU members;

2. It shall be the work of IBPAT to install all such materials as are applied by a work technique common to IBPAT members.

B. It is agreed that membership in the applicable International union be required of all employees covered by the Agreement on the 8th day following the beginning of such employment or the effective date of this Agreement, whichever is later.

ARTICLE II. WORK FORCE

A. BMPIU and IBPAT shall identify by appropriate designation on union cards, or otherwise, such of their members and other workers as are or become skilled in the application of the products covered by this Agreement and therefore qualified for journeymen employment on chemical coatings jobs.

B. The parties shall cooperate in the organization and development of re-training and apprenticeship programs to provide for an increase in the number of skilled union journeymen qualified for work in this highly specialized and rapidly changing and developing area of the finishing trades.

ARTICLE III. WORK RULES

A. Contractors shall not be required to employ journeymen who have not been declared qualified, under Article II.A of this Agreement, as skilled in the application of chemical coatings.

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3-CB 3479-2

1. When a subordinate local union does not furnish qualified workmen within 48 hours, Contractors shall be free to obtain workmen from any source.

2. The job foreman, who must be qualified under Article II.A of this Agreement, shall be selected by the Contractors after which the Contractors will give primary consideration to such II.A men as are available in the local area; and after giving such consideration, the Contractors may select II.A workmen from other areas, on the basis of specific specialized product experience, and in accordance with local contract hiring policies.

3. The working job steward, when required by the local union, shall be a workman qualified under Article II.A of this Agreement and shall exercise no supervisory functions.

B. Contractors who employ on a job a composite BMPIU-IBPAT crew shall pay to all members of the composite crew the highest basic compensation prevailing between these two crafts; to the end that workmen performing the same work on the composite crew shall receive the same compensation;

C. If either BMPIU or IBPAT fail to furnish competent journeymen for a composite crew or when either International withdraws its members from such composite crew, the Contractors may complete the balance of the job with the workmen who stay on the job.

D. Contractors shall meet all general safety regulations and specifically shall provide workmen with such suitable protective equipment as is recommended by the brand producer of the product applied; and a workman has a clear right to refuse to apply any specific product without loss of seniority or other like benefits that may have accrued to him.

E. There shall be no product classification penalties nor premiums, nor limits on production by workmen nor restrictions on the full use of tools and equipment; and the installation methods or techniques shall be determined by the project specifications or the recommendations of the manufacturer of the product applied; and there shall be no requirement as to the number of men assigned to any job.

F. Should job conditions require shift work such shift work shall be done at the rate negotiated in the applicable local agreements. If the agreements do not contain rates pertaining to shift work, the parties should establish such shift rates by negotiations for a specific project. The employer shall determine the crafts and number of men to be assigned to each of the shifts so established as per Article I.A.

G. Contractors shall work in any given area under the appropriate BMPIU or IBPAT Collective Bargaining Agreements applicable to such area.

1. Any provision of an area collective bargaining agreement which may be in conflict with this Agreement shall be subordinated to this Agreement.

2. All questions as to the proper application of the provisions of this Agreement shall be referred to the parties to this Agreement without any interruption in job-site operations.

ARTICLE IV. RESOLUTION OF DISPUTES

A. The parties shall establish a Committee known as the Work Assignment Evaluation Committee, herein referred to as WAEC, which shall consist of one representative of BMPIU, one representative of IBPAT, and one representative of Contractors, who shall have a voice but no vote.

1. To the WAEC shall be referred by member firms, district councils and subordinate local unions for settlement all work assignment disputes and work rules disputes arising under the terms of this Agreement.

2. Disputes referred to the WAEC shall require local BMPIU and IBPAT representatives to sign and submit jointly within 24 hours a complete description of the disputed work. Upon receipt of the joint description of the disputed work, the WAEC will render a decision within 72 hours, and the decisions of the WAEC shall be final and binding on all parties, including member firms, district councils and subordinate local unions, without recourse to any other procedure.

3. If WAEC is unable to reach a decision within such 72 hour period BMPIU and IBPAT, or either, shall immediately request the Director of the United States Federal Mediation and Conciliation Service to appoint an arbitrator and the decision of such arbitrator thus appointed shall be final and binding on all parties.

4. This Article shall have no force and effect if a labor organization not party to this Agreement disputes the Contractor's assignment; in which event the Contractor reserves all rights and remedies available to him at law or equity.

5. BMPIU and IBPAT shall at no time cause or allow a district council or subordinate local union to engage in a work stoppage, strike, picket line or other act that interferes with job continuity, either before, during or after a dispute has been referred to the WAEC; and BMPIU and IBPAT shall be responsible for and reserve the right to enforce decisions of the WAEC.

ARTICLE V. DURATION OF AGREEMENT

A. This Agreement shall remain in force for one year, that is, the period from February 1, 1972 to January 31, 1973, inclusive, and shall automatically renew itself from year to year thereafter unless one of the parties notifies the other two in writing within sixty days prior to any expiration date of a desire to amend or terminate this Agreement.

B. This Agreement shall be subject to change at any time by mutual consent of all three parties.

C. Any changes agreed upon shall be reduced to writing and signed by the parties the same as this Agreement.

D. If any Federal or State court or regulatory body holds any clause of this Agreement void or illegal, such clause shall be stricken out and the remaining portion of this Agreement shall be binding.

THE NATIONAL ASSOCIATION
OF DECORATIVE ARCHITECTURAL
FINISHES, INC.

Toby A. Arnheim
President

THE BRICKLAYERS, MASONS AND PLASTERERS
INTERNATIONAL UNION OF AMERICA

Thomas F. Murphy
President

THE INTERNATIONAL BROTHERHOOD
OF PAINTERS AND ALLIED TRADES

S. Frank Raftery
General President

514

AGREEMENT

TILE, MARBLE, TERRAZZO SETTERS
LOCAL UNION NOS. 6, 10, and 16

This Agreement, made and entered into on the 19th day of July, 1973, by and between the Capital District Tile, Marble, Terrazzo and Slate Contractors Association, Party of the First Part, and Locals No. 6, 10, and 16 of the Bricklayers, Masons, Plasterers, Marble, Tile and Terrazzo Workers Union, International, Party to the Second Part, shall become operative and effective on the 20th day of June, 1973, and continue in full force and effect until May 31, 1976.

ARTICLE I
BARGAINING

In accordance with and subject to the provisions of the Labor-Management Relations Act of 1947, as amended, the Party of the First Part recognizes the Party of the Second Part as the exclusive bargaining agent for all employees included under the terms and conditions of employment and all other matters covered by this Agreement. This Agreement shall cover all work performed by Tile, Marble, and Terrazzo Workers coming within the recognized jurisdiction of Locals No. 6, 10, and 16 of New York State affiliated with our International Union AFL-CIO.

It is understood and agreed by and between the Parties hereto that, as a condition of continued employment, all persons who are hereafter employed in the unit which is the subject of this Agreement, shall make application to the Union after seven (7) days from the date of their employment, after demonstrating qualifications as craft men of the trade that the continued employment by the employer in said unit of persons who are already members of the Union shall be conditioned upon those persons continuing their payment of the periodic dues of the Union.

ARTICLE II
WAGES AND WELFARE

The scale of wages to be paid Tilesetters, Marble Setters and Terrazzo Workers to be:

Effective June 20, 1974	$8.29 per hour
Effective May 31, 1974	$8.78 per hour
Effective August 1, 1974	$8.73 per hour
Effective June 1, 1975	$9.25 per hour

The Union can reduce the hourly rate to increase by an equal amount Welfare Fund or Pension Fund contributions, provided the Association is given notice a reasonable time ahead of the effective date.

Of this hourly rate, fifty cents ($.50) will be deducted for a Savings Fund to be remitted to Bankers Trust Company of Albany, N.A. 35 State Street, Albany, New York 12201, under the conditions of a separate agreement which will become a binding part of this Agreement.

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Exhibit "A"

An employee subject to this Agreement who is laid off, discharged, or held up shall receive his wages in full at that time and allowed one-half hour to clean and pack his tools. Layoff slip must be provided in the envelope.

ARTICLE III

Employer shall give employee four (4) hours notice prior to layoff.

Employee shall give employer four (4) hours notice before quitting.

ARTICLE IV

WELFARE FUND

Effective May 1st, 1971, employers shall contribute forty cents ($.40) per hour for each hour paid to employees covered by this Agreement into the Capital Area Masons Welfare Fund. Effective August 1st, 1974, employers shall contribute forty-five cents ($.45) per hour for each hour paid to employees covered by this Agreement into the Capital Area Masons Welfare Fund.

The said Welfare Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and the Union, which Agreement and Declaration of Trust shall conform to all requirements of law. A copy of the said Agreement and Declaration of Trust, together with any amendments thereto, shall be considered as part of this Agreement as though set forth here at length.

ARTICLE V

PENSION FUND

The Employers agree to pay thirty cents ($.30) per hour for each hour for which the employee is paid for all employees covered by this Agreement to the Capital Area Masons Pension Fund. The contributions of the employers shall be used exclusively to provide pension benefits to eligible employees in such form and amount as the Trustees of the Pension Fund may determine. The said Pension Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and the Union, which Agreement and Declaration of Trust shall conform to all requirements of law. A copy of the said Agreement and Declaration of Trust, together with any amendments thereto, shall be considered as a part of this Agreement as though set forth here at length.

ARTICLE VI

FRINGE BENEFIT STAMP

Each Employer shall make the payments as called for in Articles II, IV and V above through a single fringe benefit stamp system as the method of collection. Each Employer shall be required to purchase these Masons Fringe Benefit Stamps in advance from the from the Banker's Trust Company, either in person or by mail. Stamp purchase order forms may be obtained from the Mason Pension and Welfare Office, 890 Third Street, Albany, New York 12206. Orders for stamps should be filled out on the purchase order forms, designating the quantity of stamps required. Stamp purchase order forms, along with checks payable to the Capital Area Masons Fringe Benefit Funds may then either be taken in person to any office of Banker's Trust designated on the purchase order form or mailed to Banker's Trust, Main Office, 35 State Street, Albany, New York, 12201.

On each pay day there must be in each covered employee's pay envelope an amount of Fringe Benefit Stamps equal to the number of hours paid in wages. Apprentices shall also receive an amount of stamps equal to the amount of hours paid in wages. Once fringe benefit stamps are placed in the employee's pay envelope, they become the employee's responsibility and the Employer's obligation to the fringe benefit funds is completed. Special consideration will be given to stamp payment on a layoff. (e.g., allowing the Employer to mail stamps by certified mail to employees within 40 hours after layoff.)

No monthly report forms are to be filed by the Employer. Stamps purchased by an Employer and not used may be changed for other denominations or redeemed at face value. These stamps, however, are not transferable and may be redeemed only by the Employer who purchased them. Cash payment to an employee in lieu of Stamps does not fulfill an employer's obligation to the Funds.

ARTICLE VII

EXPENSE ALLOWANCE

Expenses of the employees required to work away from home shall be paid according to the following:

0 miles to 8 miles:
Free zone from the City Hall of the City of Employer

From Free Zone, next 60 miles:
Ten Cents ($.10) per mile each way with a seven dollar and fifty cents ($7.50) per day maximum

Expenses -- $10.00 and $12.00 Zones:
60 miles from Free Zone to 75 miles:
Ten dollars ($10.00) per working day

From Free Zone 75 miles and beyond:
Twelve dollars ($12.00) per working day

Transfers -- $10.00 and $12.00 Zones:

In the event an employee is transferred from one expense zone to another during the work week for the convenience of the contractor, and added expense is involved for additional room rent, the Employer shall reimburse the employee for this added expense.

The above scale of expenses to take effect on and after June 20, 1973.

In the event employees are required to be available and ready to work at the job site but cannot due to condtions beyond their control, the expense rate per working day as set forth above shall be paid for each day such condtions exist.

Holidays that occur during the work week shall be considered for expenses purposes as a working day. When a holiday occurs on a Monday and/or a Friday, such a holiday shall be considered as a working day and expense allowance of $6.00 shall be paid for that day. Employee must be on job the working day before and the working day after the holiday to qualify for this provision.

Employees should be notified if the job is less than one week's duration.

CITY HALL	60 Miles	15 Miles	Beyond
8 miles free	10¢ mile each way $7.50 Max.	$10.00 per working day	$12.00 per working day

ARTICLE VIII

HOURS

The regular working hours under this Agreement shall be eight (8) hours a day between the hours of 8:00 A.M. and 4:30 P.M., and the regular working days are Monday, Tuesday, Wednesday, Thrusday, and Friday. Any time worked after regular working hours, until 12:00 A.M. on regular working days to be paid for at the rate of time and one-half. Double time shall be paid for any hours worked between 12:00 A.M. midnight and regular working hours (8:00 A.M.), also for hours worked on Saturday, Sunday, and legal holidays. Legal holidays are New York's Day, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas. An employee for whom work is scheduled or bid for times other than those enumerated above shall be paid double time.

Eight (8) hours shall constitute a work day. If employee of his own volition or choice should leave the job before completing eight (8) hours or work he will be paid only for the hours actually worked. It shall also be the responsibility of each man to report the actual hours worked.

Optional starting time permissible between 7:30 and 8:00 a.m. by mutual consent of Contractor and business representative of the union only.

In regards to a regular working days hours if an unusual condition presents itself, the matter shall be submitted to the Arbitration Committee for clarification and decision.

518

ARTICLE IX

PAYMENT

Payment of wages to be made on Friday not later than 4:30 P.M. in U. S. currency for all work labor, or services rendered for the preceding week. Payment by check will be permissible when made on Thursday. The employer shall pay wages at specified time. If employer fails to do so, he may be liable for a waiting time not to exceed two days.

All envelopes to be plainly marked as to name of employer, employee, amount of wages, hours worked, and all deductions, such as Social Security, withholding tax, Savings Fund, including Welfare and Pension Fund payments. All employees are to be covered by Compensation, Unemployment Insurance, Social Security and Disability Benefits.

ARTICLE X

Contractor without established credit will post a bond.

ARTICLE XI

ARBITRATION

Section A.

All disputes that may arise under the terms and condtions growing out of this Agreement shall be settled by arbitration. There is to be no stoppage of work pending settlement by arbitration. Arbitration Board to consist of three members selected by the Party of the First Part and three members selected by the Party of the Second Part. Since the deliberations of this Arbitration Board will involve the peculiar facts, processes and customs of the Marble, Tile and Terrazzo business, such members of the Party of the Second Part shall be Tile, Marble, and Terrazzo members of the B. M. & P. I. U. Locals covered by this Agreement. The Party of the First Part shall have the right to have an equal number of members as the Party of the Second Part. Business Agents of each Local shall have the privilege of serving on this Committee, if elected. The decision of this Board shall be final and binding on both Parties.

Section B.

In the event that the Arbitration Board cannot agree upon the question in controversy, each Party shall designate an arbitrator and the two shall choose a third, and the third shall constitute an Arbitration Board. Both Parties shall supply each arbitrator with all data and information bearing on the controversy, and the cost of each arbitration shall be borne equally by both Parties to this Agreement. The award of such Arbitration Board shall be binding and final on both Parties, who shall have no recourse to any other tribunal or procedure. Pending the final award of such Board, it is hereby agreed that there shall be no strikes, lockouts, or stoppage of work, individually or collectively, on any project involved in the controversy.

519

ARTICLE XII

NATIONAL AGREEMENTS

It is understood and agreed by both Parties that the currently existing national agreement by and between the Tile Contractors Association of American and B. M. & P. I. U. of America, the National Terrazzo and Mosaic Association Inc. and B. M. & P. I. U. of America, and Tile Association of Marble Dealers and B. M. & P. I. U. of America shall form part of this Agreement.

ARTICLE XIII

FOREMAN

All foremen shall be mechanics in their respective trades with at least six (6) years' experience. When four (4) employees are employeed and up to six (6) men, the foreman shall receive at least two dollars $2.00) per day more than the Journeyman's wage. Seven - nine (7 - 9) Mechanics, foreman paid $3.00 a day above mechanic scale. When ten (10) or more men are employed, he shall receive at least fifty cents ($.50) per hour more than the Journeyman's wage and he shall not use the tools of the trade. When two (2) or more mechanics are employed, one (1) of them shall be foreman.

ARTICLE XIV

NEGOTIATIONS

It is mutually agreed by both Parties to this Agreement that one hundred fifty (150) days prior to expiration of this Agreement they shall meet in joint session for the purpose of formulating a new Agreement, pending the accomplishment of which this Agreement shall remain in full force and effect.

ARTICLE XV

PROTECTION

The Union shall not afford to any other employer with whom it signs a contract, terms or condtions more favorable than those incorporated in this contract.

ARTICLE XVI

If any provision of this Agreement shall violate any applicable statute, or is held invalid by any court or government agency having jurisdiction, such invalidity shall not affect the validity of the remainder of this Agreement and such provision or Article shall be void.

ARTICLE XVII

All surfaces to receive tile from metal lath, brick and/or block walls starting with a scratchcoat and including mortar bed, setting bed and/or float coat shall be the work of the tilesetter, thus enabling him to control with accuracy the dimensions of his finished product. This shall apply to the cold wall and wet wall methods. Where patching of existing gupsum plaster surfaces is required, it shall remain the work of the plasterer.

This work shall be assigned by virtue of a Jurisdictional Agreement between the Crafts involved and, being part of this Agreement, such arrangement is binding on the Parties signatory to this Agreement.

ARTICLE XVIII

INTERPRETATION

The Joint Committee reserves the right to make final interpretation of any of the Articles of this Agreement, subject to the rules for arbitration set forth in Article XI.

ARTICLE XIX

STEWARDS

Stewards must be appointed in all shops by the B. A. or president of the Union, who shall notify the contractor or his representative of such appointment. The steward shall be a member of the Party of the Second Part. Before a shop steward is discharged, the B. A. has to be notified. If the B. A. and contractor cannot agree on the discharge of the steward, the question shall be referred to the Joint Arbitration Committee.

Stewards shall be appointed every four (4) months. They shall represent the Union's interest and work with the tools.

Pending a hearing and decision by the Joint Arbitration Committee, if the shop steward is wrongfully discharged, no pay shall be lost by him. The first man on the job is responsible for the pension and welfare record reports.

ARTICLE XX

Light leads and notched trowels to be furnished by employer. Chisels, cutting wheels to be sharpened by the contractor. Contractor to be responsible for sharpening only chisels and wheels dulled by work on his project.

Employer to furnish all power tools. Employee shall take reasonable care to maintain and return same.

Any employer is to supply suitable arrangements under lock and key for storing tools against fire and theft from forced entry.

Employee is to use reasonable precaution when storing his tools and equipment outside of regular working hours. Employer is to cover such loss by the proper methods. A tool box will be sufficient. Payment will be based on 75% of replacement cost of tool up to $75.00.

When working with epoxy, Employer shall furnish necessary protective items of clothing.

Employer shall provide rain gear. Employee shall take adequate care of same and return same to employer in proper condition.

ARTICLE XXI

PRESERVATION OF WORK

It is contrary to the sound business principles and spirit of this Agreement for Employers to work with the tools, thus depriving workmen of employment and in no case shall more than one member of a firm be permitted to work with the tools.

A "contractor" or "employer" within the meaning of this Article includes any individual or the spouse of any individual who -- no matter what the form of the enterprise may be -- is alone or jointly a real party in interest in the contracting establishment or, as legal or undisclosed or disclosed beneficial owner, or corporate officer or director or otherwise directly or indirectly manages, directs, or controls the business.

Where the one member of the firm to work with tools is designated by such firm, he shall be identified by name in advance to the other Party.

In the event of layoff for lack of work in the shop, the Employer working with the tools shall cease work with the tools before any Journeyman is laid off.

The provisions included in this Article dealing with "Preservation of Work" shall be effective commencing May 1, 1971.

Effective May 1, 1970, an employer working with tools shall be restricted against overtime work in such capacity. The privilege of such overtime work shall be reserved for Journeymen.

Any man that goes into the contracting business shall not work for any other contractor, nor shall any contractor employ any such person. Also if the individual decides to discontinue contracting, he is ineligible to work as a Journeyman for another contractor for a period of one (1) year from the time he went into the contracting business.

ARTICLE XXII

COFFEE BREAK

A ten (10) minute coffee break will be allowed in the morning. Men shall remain at place of their work.

522

ARTICLE XXIII

SUBCONTRACTING

Section A

The contractor subletting any portion of a job or work on a job site shall, as a condition preceding such subletting, request the subcontractor to meet with the representatives of the Union for the purpose of complying with the provisions of the Agreement for such work.

Section B

In addition, the contractor shall provide in any subcontract that the subcontractor shall conform to the terms of this Agreement insofar as wages, hours, and working conditions are concerned.

Section C

If it is found that the subcontractor is not complying with Paragraph B above, the Union shall give the contractor forty (40) hours' notice in writing before any action is taken.

Responsibility of the contractor for loss of wages and benefits shall be limited to the amount of monies due to the subcontractor by the contractor as of the date of written notice.

IN WITNESS WHEREOF we have hereunto set our hands and attached the official seals of our respective organizations this 18th day of July, 1973.

LOCALS No. 6, 10 and 16 OF THE BRICKLAYERS, MASONS AND PLASTERERS INTERNATIONAL UNION OF AMERICA	CAPITAL DISTRICT TILE, MARBLE, TERRAZZO AND SLATE CONTRACTORS ASSOCIATION
Also Malossi, Local No. 6	Daniel A. Lanzetta, Jr.
Salvator Mauriello, Local No. 10	Victor V. Mion
Vincent Riggi, Local No. 16	

8/12/74
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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)
)
Petitioner,)
)
v.) No. 77-4200
)
DESCO VITRO-GLAZE OF SCHENECTADY,)
INC.,)
)
Respondent.)

CERTIFICATE OF SERVICE

The undersigned certifies that one (1) copy of the appendix in the above-captioned case have this day been served by first class mail upon the following counsel at the addresses listed below:

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Union, AFL-CIO
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Elliott Moore
Elliott Moore
Elliott Moore
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

this 3rd day of February, 1978.